
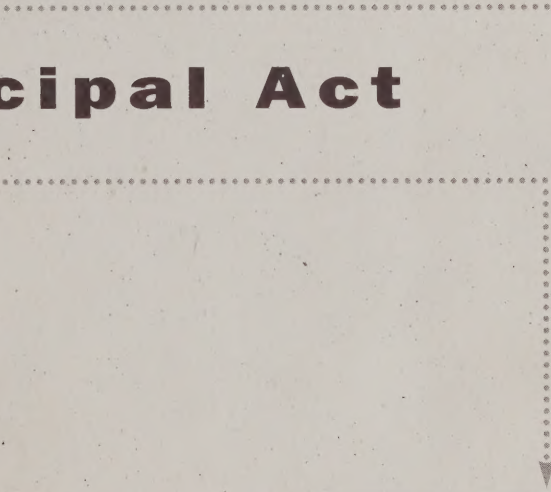


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A Proposed New

Municipal Act




Draft Legislation,

Including Explanatory

Notes

C o n s u l t a t i o n D o c u m e n t

Spring 1998



A Proposed New Municipal Act

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*Proposition de nouvelle loi sur
les municipalités*

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Ministry of Municipal Affairs and Housing
Spring 1998




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EXPLANATORY NOTES FOR CONSULTATION DRAFT OF NEW MUNICIPAL ACT

INTRODUCTION

Ontario's current Municipal Act is prescriptive, detailed and complicated. It has not had a comprehensive overhaul since it was enacted in 1849. Municipalities and other stakeholders have for many years been asking for a simpler, more modern Act, which would be more understandable and provide a more flexible framework for municipal activities.

The attached draft Act is intended to do that. It proposes a more streamlined Municipal Act that would provide municipal flexibility and the appropriate checks and balances. A more detailed framework would continue to be provided for municipal financial activities in recognition of the provincial interest in protecting the financial integrity of Ontario's municipalities.

What follows is an outline of the proposed legislation. It briefly describes each of the nineteen parts of the draft legislation,

highlighting matters that are new or different from the current Municipal Act and other related statutes, such as the Regional Municipalities Act. It will be a guide as you look through the proposed legislation itself.

Please send your comments on this draft legislation **before May 8, 1998** to:

**Ministry of Municipal Affairs and
Housing
Local Government Policy Branch
13th Floor
777 Bay Street
Toronto, ON M5G 2E5**

You can also **fax** comments to:
(416) 585-7638 or **e-mail** them to
odiasele@mmah.gov.on.ca

PART I: GENERAL

This part would continue certain key provisions from the current Act, such as the requirement that the powers of a municipality are to be exercised by its council (section 3). It would also continue the existence of every municipality (section 6).

It includes a number of essential definitions. For example, because the Acts for the regional municipalities are to be incorporated into the new Act, there would in future be only three classes of municipalities: those that form part of a two-tier municipal system, i.e., (1) “lower-tier” and (2) “upper-tier” municipalities, and those that do not, i.e., (3) “single-tier” municipalities (section 1).

PART II: MUNICIPAL POWERS

This important part of the draft Act sets out many of the powers of municipalities, the division of responsibilities in two-tier

municipal systems, and the general limits on municipal powers. A key change from the existing Act is the enhanced flexibility in the way municipalities would be able to operate. Although they would continue to have to rely on provincial legislation for authority to operate, the legislation, except for financial matters, would be less prescriptive and detailed.

Limits in the draft Act are set out explicitly instead of implicitly, as under the current Municipal Act. This enhanced flexibility for municipalities would be provided in Part II through three instruments.

● Natural Person Powers

It is being proposed that municipalities have the powers of a natural person (section 8). This would not allow municipalities to provide a service for which they do not have legislative authority. It would, however, enable municipalities to conduct their day-to-day business without the need for specific legislative authority, e.g., to enter into agreements, to purchase land and equipment, to hire employees, and to delegate administrative responsibilities to

Explanatory Notes

committees, staff members or other bodies, such as boards of management.

● Governmental Powers

Municipalities would also have certain governmental powers that are not available to a natural person, such as the authority to regulate or prohibit certain activities, to require individuals to do certain things, and to establish a system of licences, permits, approvals and registrations (subsection 9(3)).

Other essential governmental powers, such as the authority to levy taxes and to enforce municipal by-laws, are provided in other parts of the draft Act.

● Spheres of Jurisdiction

In the current Act, whose origins go back to 1849, municipal authority is set out in a very detailed and prescriptive form. In the proposed new Act, municipalities would be given general powers that would authorize them to exercise their governmental and natural person powers in thirteen subject areas (section 11).

These areas, or “spheres of jurisdiction”, reflect current municipal activities but are

expressed in a more general form to allow councils to deal with local circumstances, and to avoid the need for amendments to the Act every time a new local issue arises.

The proposed spheres are:

1. **Health, safety, protection and well-being of people and the protection of property**, e.g., 911 communication systems and removal of snow from municipal sidewalks;
2. **Public utilities**, e.g., water supply and sewage treatment facilities;
3. **Waste management**, e.g., collection, recycling, composting and disposal;
4. **Highways, including parking and traffic on highways**;
5. **Transportation systems other than highways**, e.g., transit, ferries and airports;
6. **Natural environment**, e.g., regulating the placing or dumping of fill;
7. **Culture, parks, recreation and heritage**, e.g., parks, arenas, museums and art galleries;

Explanatory Notes

- | | |
|--|---|
| 8. Economic development , e.g., industrial parks, and economic and tourism promotion; | exclusively to its upper-tier municipality (subsection 11(2)). For some spheres, such as culture, parks, recreation and heritage, both lower-tier and upper-tier municipalities would be able to pass by-laws to provide facilities and programs. |
| 9. Nuisance, noise, odour, vibration, illumination and dust ; | |
| 10. Drainage and flood control, except storm sewers , e.g., floodways and purchase of wetlands; | A Table is included in Part II which sets out the division of municipal responsibilities in two-tier systems. This Table continues the existing division of responsibilities into the draft Act without changes. |
| 11. Structures, including fences and signs , e.g., fences around swimming pools; | |
| 12. Parking, except on highways , e.g., parking lots and garages and mandatory spaces for disabled individuals on private parking lots; and | |
| 13. Animals , e.g., licences, spaying clinics and limits on exotic animals. | |

Specific Municipal Powers

The proposed use of “spheres of jurisdiction” removes the need for a comprehensive list of specific municipal powers, as is found in the current Municipal Act. The detailed provisions set out in sections 28 to 142 are those required to provide specific powers that are not covered by the spheres, or to establish procedures and other requirements that municipalities must follow in exercising certain powers.

For example, there are specific provisions to authorize municipalities to enter onto private property, after giving reasonable notice, to repair a utility service pipe or wire (section 35), to close municipal roads (section 71), and to establish a monopoly for transit

Single-tier municipalities, such as the City of London and the new County of Prince Edward, would be able to pass by-laws within all thirteen spheres of jurisdiction (subsection 11(1)). In two-tier municipal systems, the basic rule would be that a lower-tier municipality would be able to pass by-laws within the spheres unless a sphere or part of a sphere has been assigned

services operated solely within the municipality (section 99).

There are specific provisions to authorize municipalities to create business improvement areas (BIAs), and to set out the process for establishing and dissolving BIAs and for selecting their board members (sections 114 to 124). There are also specific provisions to make the Crown subject to municipal smoking by-laws (subsection 28(2)), and to protect the rights of adjacent property owners when municipal roads are being closed (subsection 71(5)).

Part II contains provisions on public utility commissions other than hydro-electric commissions (sections 49 to 57). Under the proposed legislation, existing public utilities commissions would be continued, but municipalities would not be able to establish new public utilities commissions other than for hydro-electric purposes.

The provisions dealing with hydro-electric commissions would not be changed and would remain, as at present, in the Public Utilities Act. When the policy on the restructuring of Ontario Hydro has been determined, the hydro-electric commission provisions in the Public Utilities Act could be revised as required.

General Limits on Municipal Powers

As noted earlier, the approach being proposed for the new Act would require that the restrictions on municipal powers be set out explicitly. Eight proposed general limits are set out in Part II.

1. Municipal by-laws would be invalid to the extent of any conflict with provincial or federal statutes or regulations (section 16).
2. Municipal by-laws passed under the spheres or business licensing powers (section 143 of Part III) would be invalid if they regulate or prohibit a matter in substantially the same way or in a more restrictive way than a provincial regulation (section 17).
3. Municipalities would not be able to regulate under the spheres or their natural person powers in certain defined areas of provincial jurisdiction, such as workplace health and safety (section 18).
4. Municipal by-laws passed under the spheres or their natural person powers would be subject to any procedural requirements and limits on the power

contained in a specific provision of the new Municipal Act or any other Act (section 19).

5. Municipalities would not be able to regulate or prohibit privately-owned systems, including facilities and programs, under the “public utilities”, “waste management” and “transportation systems other than highways” spheres (section 20).
6. Municipalities would not be able to do certain things under the spheres or their natural person powers that other “natural persons” are able to do, such as set up a corporation or purchase shares in a company (section 21).
7. Municipalities would not be able to grant any person a monopoly on carrying on any business, trade or occupation, unless specifically authorized to do so (section 22).
8. Municipalities would only be able to exercise their authority within their geographic boundaries, with certain exceptions (section 23 and other specific provisions).

PART III: BUSINESS LICENSING

Concern has been expressed about the business licensing provisions in the current Municipal Act, and several changes have been made in the draft Act. For example, a licensing by-law would have to include an explanation as to why the municipality is licensing that class of business (subsection 143(8)); the list of businesses that cannot be licensed by a municipality would be consolidated by incorporating into the draft Act businesses that have been exempted by regulation from licensing by-laws (subsection 143(3)); and licence fees would not be able to exceed the costs of administering and enforcing the by-law (subsection 143(7)).

A new process to enhance municipal accountability would be established in Part IX, Financial Administration, which municipalities would have to follow in developing and administering their policy on business licensing (section 265). The specific licensing provisions for certain upper-tier municipalities have also been incorporated into this part (sections 153 to 159).

PART IV: MISCELLANEOUS POWERS

This part contains a number of unrelated provisions which are being carried forward from the current Act, including those authorizing the payment of remuneration and expenses to members of councils and local boards (sections 181 and 182). However, the current tax free allowance for expenses would be eliminated (subsection 181(4)).

Another change of note is that the respective roles of the province and municipalities in regulating the days and hours of retail business establishments would be clarified. Generally, the province would determine the days of operation under the Retail Business Holidays Act, except for civic holidays (subsection 160(4)), and municipalities would deal with the hours of operation under the proposed new Municipal Act (subsection 160(2)).

PART V: TRANSFER OF POWERS

Municipalities in two-tier municipal systems have authority under the current Municipal Act to transfer certain powers from the lower-tier municipalities to the upper-tier or vice versa, subject to certain consent rules. These “service migration” provisions are continued in sections 183 to 188 of the draft Act with some changes to provide greater flexibility.

The existing regulation permits the transfer of transit, economic development, fire services and business licensing between the tiers. The regulation also permits the transfers of sewer, water and police services, but only from the lower-tier to the upper-tier.

The current Municipal Act, Regional Municipalities Act and other regional Acts contain provisions which permit upper-tier municipalities to assume waste management powers from their lower-tier municipalities, subject to certain consent rules. These provisions are not included in the draft Municipal Act, although by-laws passed under these provisions would be continued (section 12 of Part II, Municipal Powers).

Explanatory Notes

Instead, it is proposed that waste management, as well as tax collection, be added to the regulation as services that could be transferred, like sewer and water services, only from the lower-tier to the upper-tier under the “service migration” provisions.

The provisions which allow municipalities to dissolve and make changes to certain local boards are also continued in this part of the draft Act (section 189). A number of major boards would remain exempt from this authority, including school boards, police services boards, conservation authorities, public library boards, hydro-electric commissions, children’s aid societies and boards of health.

PART VI: MUNICIPAL RESTRUCTURING

The provisions which provide authority for municipalities to restructure, e.g., to amalgamate with one or more municipalities or to annex part of another municipality, are continued in this part of the draft Act (sections 190 to 196). These provisions would not apply to: (1) the City of Toronto, or (2) the regional municipalities, including

Muskoka and Oxford, and their lower-tier municipalities, except for “minor restructuring proposals” (subsections 190(2) and 191(12)).

The role of the Ontario Municipal Board in dealing with municipal structural changes in northern Ontario, including the annexation of unorganized areas and the dissolution of municipalities, would be continued in a more streamlined form (sections 197 to 203).

This part also contains a proposed new provision that would allow a municipality to change its name (section 204).

PART VII: MUNICIPAL COUNCILS

This part would continue the composition of the council of every municipality as it was on the day before the proposed new Act comes into force (section 205). This includes the method of electing council members, the number of votes for each member, and the titles of the members.

The current provisions which allow municipal councils, except for the councils of regional municipalities, to change their size, composition, titles and wards would be

continued (sections 206 to 212). They have been modified in the draft Act to provide clarification and greater flexibility to councils, e.g., with respect to the head of an upper-tier council.

A regional municipality would, as at present, be able to exercise these powers only if the Minister, at the request of a regional council, extends the powers to that region by regulation (subsections 207(5) to (8)).

The current rules about who is eligible to hold an elected municipal office are included in this part of the draft Act (sections 213 to 215). The provisions about filling temporary and permanent vacancies are also included (sections 216 to 227). They have been revised to remove unnecessary details, e.g., as to how a vacancy is to be filled by appointment, and to provide councils, including regions, with greater flexibility in filling vacancies.

PART VIII: PRACTICES AND PROCEDURES

This part brings together provisions that deal, for example, with municipal council meetings, including the ground rules about

where, when and how meetings are to be held and conducted (sections 228 to 237); access to and retention of municipal records (sections 243 to 245); and restrictions on council actions between polling day and the day the new council takes office (section 258). The proposed policy of these provisions remains largely unchanged.

On several procedural and administrative issues, however, the proposed direction in Part VIII is quite different than currently exists. For example, in addition to the current requirements for procedural by-laws about meetings (section 248) and the sale of municipal land (section 249), each council would be required to develop a by-law outlining its policy on giving notice to and consulting with the public (sections 246 and 247).

Another change of note relates to the exceptions to the general rule that all council meetings are to be open to the public (subsection 248(5)). It is proposed that, in addition to the current exceptions that are set out in subsection 248(8) of the draft Act, each municipal council, in its procedural by-law, be permitted to specify additional subjects that could be dealt with at a closed meeting of council (subsection 248(7)).

This part also contains provisions delineating, in general terms, the respective roles of the council, the head of council, and the municipal administration (sections 251 to 253). Municipalities would have more flexibility about how they organize themselves but would be required, under the proposed legislation, to set out the organizational structure of their administration in a by-law for the information of the public (section 255).

The current requirement that every municipality appoint a clerk is continued in section 256 of this part, although the relevant provisions have been modernized. The requirement that every municipality appoint a treasurer is continued in section 260 of Part IX, Financial Administration.

The draft provisions make it clear that a clerk or treasurer need not be an employee of the municipality (subsections 256(3) and 260(3)). However, as at present, a member of council would not be eligible to serve as clerk or treasurer or hold any other administrative position of the municipality (section 254).

PART IX: FINANCIAL ADMINISTRATION

In addition to the requirement to appoint a treasurer (section 260), this part would continue many of the financial reporting provisions (sections 268 and 269) and audit requirements (sections 270 and 271) of the current Municipal Act. It would also incorporate, in one area, all requirements for the preparation of the municipal budget (sections 263 and 264) and for municipal financial accountability to taxpayers (section 273). In addition, the remaining provisions of the Ontario Municipal Support Grants Act would be incorporated into this part (sections 274 and 275).

PART X: MUNICIPAL TAXATION

Sections 276 to 294 of this part contain the provisions of the current Municipal Act that were enacted recently in the Fair Municipal Finance Act, 1997 (Bill 106) and the Fair Municipal Finance Act, 1997 (No.2) (Bill 149). No significant changes have been made in the draft Act, except that the installment dates in the proposed legislation

Explanatory Notes

for the payment of upper-tier tax levies by their constituent lower-tier municipalities would apply in future to regions as well as counties (subsection 281(7)).

Provisions authorizing special area rating where there has been a municipal restructuring have been included (sections 295, 297 and 298). In addition, this part contains a proposed provision that would permit the Minister to establish special area rating powers by regulation for all municipalities, whether or not there has been a restructuring (section 296). The intention is that this provision would be used to allow municipalities to continue to use the special area rating powers they now have.

PART XI: TAX COLLECTION

This part of the draft Act proposes a process for the collection of municipal property taxes, and continues many of the provisions of the current Municipal Act. Some changes have been made to provide for a more streamlined and accountable tax collection function. For example, municipalities would be able to set their own interest rate on late payments and would be required to pay, on involuntary

overpayments, a rate of two percentage points or less below the interest rate charged on late payments (section 304).

PART XII: SALE OF LAND FOR TAX ARREARS

This part proposes a process for the municipal sale of property to recover property tax arrears, and incorporates the current Municipal Tax Sales Act, which came into force on January 1, 1985. Some changes have been made to the existing tax sales provisions in the draft Act. For example, the present distinction between “vacant land” and “improved land” has been removed (section 326).

It is also being made clear that, where municipalities conduct a tax sale and do not achieve the “cancellation price”, vesting of the property in the municipality would not occur automatically (clause 332(5)(b)). In addition, transitional provisions have been included to deal with properties that were registered for tax arrears under the tax sale provisions that were in force prior to January 1, 1985 (section 341).

PART XIII: FEES AND CHARGES

This part continues the user fee provisions of the current Act that were enacted in the Savings and Restructuring Act, 1996 (Bill 26). They provide municipalities with broad authority to charge user fees for services provided or for the use of municipal property (sections 344 to 350).

Since this broad authority makes the existing specific user fee provisions in the current Act redundant, these are not continued in the draft Act. As with business licensing, concern has been expressed about the current user fee provisions and several changes have been made. For example, no user fee by-law could impose a fee or charge that exceeds cost recovery unless the by-law includes an explanation for a higher fee (subsection 345(2)).

A new process to enhance municipal accountability would be established which municipalities would have to follow in developing and administering their policy on user fees. This proposed process, which is similar to that for business licensing, is set out in section 266 of Part IX, Financial Administration.

This part contains a proposed provision that would allow the Minister, by regulation, to deem certain fees and charges which are imposed on benefitting owners for specific property-related works to have the same status as property taxes (clause 353(2)(a)). The provision would also allow the Minister to establish the process that is to be followed by municipalities in imposing these particular fees and charges (clauses 353(2)(b) to (e)). This process would replace the current procedures in the Local Improvement Act, which would be repealed.

PART XIV: DEBT AND INVESTMENT

This part of the draft Act continues the provisions of the current legislation relating to debt and investment that were enacted in the Better Local Government Act, 1996 (Bill 86). They would provide a framework for municipalities to borrow on a short and long-term basis (sections 354 to 369), as well as a framework for the investment of monies held in their various funds (sections 371 to 374).

The language of these provisions has been streamlined and consolidated.

PART XV: ENFORCEMENT and

PART XVI: MUNICIPAL LIABILITY

The authority of municipalities to enforce their by-laws and the provisions granting them some protection from liability are continued in Part XV and Part XVI of the draft Act, respectively. The substance of the provisions remains largely unchanged, although the existing language has been modernized.

It is being made clear in Part XV that a municipal by-law enforcement officer would have the authority at any reasonable time to enter upon land and into structures, other than a dwelling, to determine whether a municipal by-law is being complied with (section 381). It is also being made clear that, before exercising this or any other proposed power of entry under the draft Act, a municipality would have to provide reasonable notice to the occupier of the land (section 385).

PART XVII: REGULATIONS

This part contains a proposed provision that would allow Cabinet to restrict municipal powers by regulation (section 402). This is also a feature of the new municipal legislation in both Alberta and Manitoba.

In the proposed Ontario legislation, any regulation enacted under this authority would sunset after three years and would not be eligible for renewal or extension (subsections 402 (5) & (6)). Examples of where this power might be used are set out in subsection 402(2). To recognize the diversity of circumstances within Ontario, it is proposed that regulations made under this authority could apply differently to different municipalities (subsection 402(3)).

PART XVIII: TRANSITION

This part adds a number of transitional provisions to those included in earlier parts. For example, all remaining police villages would be dissolved on December 1, 2000 (section 403). Until that date, the police village provisions in sections 332 to 357 of the current Municipal Act would, despite their repeal, continue to apply to those police villages.

As well, even though the board of control provisions in sections 64 to 68 of the current Municipal Act would be repealed, they would continue to apply to existing boards of control in the City of Kingston and City of London (section 406). However, the references in subsections 68(3), (6) and (7) to a two-thirds vote would be deemed to be references to a majority vote of council (subsection 406(1)).

PART XIX: REPEALS

What legislation would be replaced by the proposed new Municipal Act?

Aside from the existing Municipal Act, more than thirty other statutes would be incorporated in whole or in part into the new Municipal Act. These include the Regional Municipalities Act, the twelve regional Acts and the Acts for certain counties. Other major statutes to be repealed would include the Municipal Tax Sales Act and the Municipal Boundary Negotiations Act.

The municipal road provisions of the Public Transportation and Highway Improvement Act, which is administered by the Ministry of Transportation, would be repealed and replaced by the highways provisions of the proposed new Municipal Act. This part contains a complete list.

The draft Act does not include the provisions of the Municipal Elections Act, 1996. The intention, however, is that the provisions of that newly revised legislation would be incorporated into the Bill that would be introduced for first reading in the Legislative Assembly.

Explanatory Notes

Nor does the draft Act incorporate the provisions of the Municipal Conflict of Interest Act. Instead, the intention is to review that statute with the goal of bringing it more into conformity with the provincial conflict of interest and integrity principles.

What complementary amendments would be required to other statutes?

Many other statutes which are not being repealed would be affected by a new Municipal Act and would require complementary amendments. These are not included in the draft Act, but would be an important part of the Bill that would be introduced for first reading.

FORMAT OF THE DRAFT LEGISLATION

How will the reader know what are proposed new policies and from which Acts existing policies have been incorporated?

For the purposes of consultation, a page entitled, **Notes on Sources of Part ...** has been included at the beginning of each of the nineteen parts. This page has a double border.

The “notes on sources” page indicates which sections reflect proposed new policies, and from which Acts existing policies have been incorporated.

Sections containing proposed new policies have also been highlighted in the body of the legislation.

The “notes on sources” pages and the highlighting have been added only for the consultation draft. This format will not be used in a first reading Bill.

WHERE TO SEND COMMENTS

Please send your comments **before May 8, 1998** to:

**Ministry of Municipal Affairs and Housing
Local Government Policy Branch
13th Floor
777 Bay Street
Toronto, ON M5G 2E5**

Fax: (416) 585-7638 or

E-mail: odiasele@mmah.gov.on.ca

Proposed Legislation

New Municipal Act

Consultation Draft

Ministry of Municipal Affairs and Housing
Spring 1998

NOTES ON SOURCES OF PART I PROVISIONS GENERAL

Proposed New Policies:

Section 1: definitions of "lower-tier municipality", "public utility", "single-tier municipality", "system" and "upper-tier municipality".

Section 7(1)(a)

Other Provisions:

The other provisions of Part I are based on the following Acts:*

Municipal Act, as amended by the Savings and Restructuring Act, 1996

Municipal Elections Act, 1996

Municipal Freedom of Information and Protection of Privacy Act

Public Transportation and Highway Improvement Act

Public Utilities Act

Regional Municipalities Act

12 Regional Acts**

Note:

* In many cases, provisions incorporated into the various Parts of the draft Act from existing Acts have been reworded, the language simplified, and unnecessary detail removed.

** Where a note for any Part refers to the 12 Regional Acts, the following Acts are included:

Regional Municipality of Durham Act

Regional Municipality of Haldimand-Norfolk Act

Regional Municipality of Halton Act

Regional Municipality of Hamilton-Wentworth Act

Regional Municipality of Niagara Act

Regional Municipality of Ottawa-Carleton Act

Regional Municipality of Peel Act

Regional Municipality of Sudbury Act

Regional Municipality of Waterloo Act

Regional Municipality of York Act

County of Oxford Act

District Municipality of Muskoka Act

Municipal Act, 1998

PART I GENERAL

Definitions

1. (1) In this Act,

"animal" means any member of the animal kingdom, other than a human; ("animal")

"county" means an upper-tier municipality that was a county, including the Frontenac Management Board, on the day before this Act came into force; ("comté")

"First Nation" means a band as defined in the *Indian Act* (Canada); ("première nation")

"highway" means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway; ("voie publique")

"land" includes buildings; ("bien-fonds")

"local board" means a public utility commission, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority; ("conseil local")

"local municipality" means a single-tier municipality or a lower-tier municipality; ("municipalité locale")

"lower-tier municipality" means a municipality that forms part of an upper-tier municipality for municipal purposes; ("municipalité de palier inférieur")

"Minister" means the Minister of Municipal Affairs and Housing; ("ministre")

"municipality" means a geographic area whose inhabitants are incorporated; ("municipalité")

"person" includes a municipality unless the context otherwise requires; ("personne")

"prescribed" means prescribed by regulations made under this Act; ("prescrit")

"public utility" means,

- (a) a system or facility that is used to provide any of the following services or things for the public:

- (1) water,

- (ii) sewage,
- (iii) fuel, including natural and artificial gas,
- (iv) energy, including electricity,
- (v) heating and cooling, and
- (vi) telephone, and

(b) the service or thing that is provided; ("service public")

"rateable property" means land that is subject to municipal taxation; ("bien imposable")

"record" is a record as defined in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act*; ("document", "dossier", "registre")

"regional municipality" means an upper-tier municipality that was a regional or district municipality or the County of Oxford on the day before this Act came into force; ("municipalité régionale")

"regular election" means the triennial regular election referred to in subsection 4 (1) of the *Municipal Elections Act, 1996*; ("élection ordinaire")

"sewage" includes,

- (a) storm water and other drainage from land, and
- (b) commercial wastes and industrial wastes that are disposed of in a sewage system; ("eaux d'égout")

"single-tier municipality" means a local municipality that does not form part of an upper-tier municipality for municipal purposes; ("municipalité à palier unique")

"system" means one or more programs or facilities (including real and personal property) of a person used to provide services and things to any other person and includes administration related to the programs, facilities, services and things; ("réseau", "système")

"unorganized territory" means a geographic area without municipal organization; ("territoire non érigé en municipalité")

"upper-tier municipality" means a municipality of which two or more lower-tier municipalities form part for municipal purposes. ("municipalité de palier supérieur")

Municipality

(2) In this Act, a reference to a municipality is a reference to its geographical

area or to the municipal corporation, as the context requires.

Application to other Acts

(3) This section applies to all other Acts relating to municipal matters unless the context otherwise requires.

Body corporate

2. The inhabitants of every municipality are incorporated as a body corporate.

Powers exercised by council

3. (1) The powers of a municipality shall be exercised by its council.

Council a continuing body

(2) Anything begun by one council may be continued and completed by a succeeding council.

Powers exercised by by-law

(3) A municipal power, including a municipality's capacity, rights, powers and privileges under section 8 shall be exercised by by-law, unless the municipality is specifically authorized to do otherwise.

Scope

(4) Subsections (1) to (3) apply to all municipal powers, whether conferred by this Act or otherwise.

Expropriation

4. The power of a municipality to acquire land under this or any other Act includes the power to expropriate land in accordance with the *Expropriations Act*.

Special Act not affected

5. Except where otherwise provided, this Act does not affect any special Act relating to a particular municipality.

Transition, lower-tier municipality

6. (1) Every city, town, township and village that existed and formed part of a county, a regional or district municipality or the County of Oxford for municipal purposes on the day before this section came into force,

(a) is continued with the same name; and

(b) has the status of a lower-tier municipality which stands in the place of the city, town, township or village, as the case may be, for all purposes.

Transition, single-tier municipality

(2) Every city, town, township and village that existed and did not form part of a county, a regional or district municipality or the County of Oxford for municipal purposes on the day before this section came into force,

- (a) is continued with the same name; and
- (b) has the status of a single-tier municipality which stands in the place of the city, town, township or village, as the case may be, for all purposes.

Transition, upper-tier municipality

(3) Every county and every regional or district municipality and the County of Oxford that existed on the day before this section came into force,

- (a) is continued with the same name; and
- (b) has the status of an upper-tier municipality which stands in the place of the county, regional or district municipality or the County of Oxford, as the case may be, for all purposes.

Continuation of by-laws, resolutions

7. (1) If, as a result of this Act, a city, town, township, village, county, regional or district municipality, the County of Oxford or any of their local boards that existed on the day before this section came into force no longer has the authority to pass a by-law or resolution that was in force on the day before this section came into force, despite the absence of authority,

- (a) the by-law or resolution continues in force until its repeal or three years after this section comes into force, whichever occurs first; and
- (b) the authority, as it read on the day before this section came into force, continues to apply to the by-law or resolution passed under it before this section came into force.

Restriction

(2) A by-law or resolution described in subsection (1) shall not be amended.

Effect

(3) Nothing in this section repeals or authorizes the repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the city, town, township, village, county, regional or district municipality or the County of Oxford.

NOTES ON SOURCES OF PART II PROVISIONS MUNICIPAL POWERS

Proposed New Policies:

Sections 8 to 11 (except Table)

Sections 13 to 21

Section 23

Section 26 (2) & (3)

Section 27

Section 28 (6)(c), (9) (b)

Section 44

Section 45 (b)

Section 50 (2)

Section 52 (1), (2) & (3)

Section 54 (1), (4) (a) & (b)

Section 60 (1)

Section 65

Section 67

Section 70 (2)

Section 71 (1) & (2)

Section 72

Section 73

Section 81

Section 92 (2)

Section 96 (2)

Section 99 (3)

Section 104 (4) & (11)

Section 105 (4)

Section 108

Section 113

Section 114 (2) to (7)

Section 115 (1) & (2)

Section 116

Section 119

Section 120 (1) (a) & (b), (3) & (4)

Sections 121 & 122

Section 123 (2)

Section 135

Section 141

NOTES ON SOURCES OF PART II PROVISIONS (Contd.) MUNICIPAL POWERS

Other Provisions:

The other provisions of Part II are based on the following Acts:

- City of London Act, 1960-61
- Community Recreation Centres Act
- County of Simcoe Act, 1993
- Ferries Act
- Line Fences Act
- London-Middlesex Act, 1992
- Municipal Act, as amended by the Fair Municipal Finance Act, 1997
- Public Transportation and Highway Improvement Act
- Public Utilities Act
- Regional Municipalities Act
- 12 Regional Acts
- Sarnia-Lambton Act, 1989
- Snow Roads and Fences Act
- Telephone Act

PART II MUNICIPAL POWERS

Powers of a natural person

8. A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

Interpretation

9. (1) Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities,

- (a) to enable them to govern their affairs as they consider appropriate; and
- (b) to enhance their ability to respond to municipal issues.

Ambiguity

(2) In the event of ambiguity in sections 8 and 11, those sections shall be interpreted broadly to include, rather than exclude, municipal powers that existed on the day before the coming into force of those sections.

Scope of by-law making powers

(3) Without limiting the generality of subsections (1) and (2), a by-law under section 11 respecting a matter may,

- (a) regulate or prohibit respecting the matter; and
- (b) as part of the power to regulate or prohibit respecting the matter, require persons to do things respecting the matter and provide for a system of licences, permits, approvals and registrations respecting the matter.

Scope

10. (1) Without limiting the generality of section 9, a by-law under section 11 may deal differently with different persons, businesses, activities, services, things or geographic areas.

Classes

(2) Despite subsection (1), a by-law may only deal differently with different persons or businesses if the persons or businesses constitute different classes of persons or businesses defined in the by-law.

Spheres of jurisdiction, single-tier municipality

11. (1) A single-tier municipality may pass by-laws respecting matters within the following spheres of jurisdictions:

- 1. Health, safety, protection and well-being of people and the protection of property.

2. Public utilities.
3. Waste management.
4. Highways, including parking and traffic on highways.
5. Transportation systems other than highways.
6. Natural environment.
7. Culture, parks, recreation and heritage.
8. Economic development.
9. Nuisance, noise, odour, vibration, illumination and dust.
10. Drainage and flood control, except storm sewers.
11. Structures, including fences and signs.
12. Parking, except on highways.
13. Animals.

Same, lower-tier municipalities

(2) A lower-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction described in the Table to this section and an upper-tier municipality may pass by-laws respecting matters under those spheres or parts of spheres of jurisdiction assigned to it by the Table, subject to the following provisions:

1. If a sphere or part of a sphere of jurisdiction is assigned exclusively to an upper-tier municipality, its lower-tier municipalities do not have the power to pass by-laws respecting matters within that sphere or part.
2. If a sphere or part of a sphere of jurisdiction is assigned to an upper-tier municipality non-exclusively, both the upper-tier municipality and its lower-tier municipalities have power to pass by-laws respecting matters under that sphere or part.
3. An upper-tier municipality does not have the power to pass a by-law respecting a matter under this section that applies within a lower-tier municipality to the extent that this Act (other than this section) or any other Act confers power to pass the by-law on the lower-tier municipality.
4. A lower-tier municipality does not have the power to pass a by-law respecting a matter under a sphere or part of a sphere of

jurisdiction to the extent that this Act (other than this section) or any other Act confers power to pass the by-law on its upper-tier municipality.

T A B L E

SPHERE OF JURISDICTION	PART OF SPHERE ASSIGNED	UPPER-TIER MUNICIPALITY (IES) TO WHICH PART OF SPHERE ASSIGNED	EXCLUSIVE OR NON-EXCLUSIVE ASSIGNMENT
1. Health, safety, protection and well-being of people and the protection of property	A communication system for the provision of emergency response services	All	Non-exclusive
	Enforcement of the <i>Building Code Act, 1992</i>	Haldimand-Norfolk, Sudbury	Exclusive
2. Public Utilities	Sewage treatment	All counties, Niagara, Ottawa-Carleton, Waterloo, York	Non-exclusive
		Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Muskoka, Oxford, Peel, Sudbury	Exclusive
	Collection of sanitary sewage	All counties, Niagara, Ottawa-Carleton, Waterloo, York	Non-exclusive
		Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Muskoka, Oxford, Peel, Sudbury	Exclusive
	Collection of storm water and other drainage from land	All upper-tier municipalities	Non-exclusive
	Water production, treatment and storage	All upper-tier municipalities except counties	Exclusive
	Water distribution	Niagara, Waterloo, York	Non-exclusive
		Oxford, Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Muskoka, Ottawa-Carleton, Peel, Sudbury	Exclusive

SPHERE OF JURISDICTION	PART OF SPHERE ASSIGNED	UPPER-TIER MUNICIPALITY (IES) TO WHICH PART OF SPHERE ASSIGNED	EXCLUSIVE OR NON-EXCLUSIVE ASSIGNMENT
3. Waste management	Whole sphere, except waste collection.	Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Lambton, Ottawa-Carleton, Oxford, Peel, Sudbury, Waterloo, York	Exclusive
4. Highways, including parking and traffic on highways	Whole sphere	All upper-tier municipalities	Non-exclusive
5. Transportation systems other than highways	Airports	All upper-tier municipalities	Non-exclusive
	Ferries	All upper-tier municipalities	Non-exclusive
	Disabled passenger transportation system	Peel, Halton	Non-exclusive
	Passenger transportation system, except airports, ferries	Hamilton-Wentworth, Ottawa-Carleton	Exclusive
6. Natural environment	Tree conservation	All upper-tier municipalities	Non-exclusive
7. Culture, parks, recreation and heritage	Whole sphere	All upper-tier municipalities	Non-exclusive

SPHERE OF JURISDICTION	PART OF SPHERE ASSIGNED	UPPER-TIER MUNICIPALITY (IES) TO WHICH PART OF SPHERE ASSIGNED	EXCLUSIVE OR NON-EXCLUSIVE ASSIGNMENT
8. Economic development	Promotion of the municipality	Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Oxford, Sudbury	Exclusive
		All counties, Muskoka, Niagara, Ottawa-Carleton, Peel, Waterloo, York	Non-exclusive
	Industrial, commercial and institutional sites	Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Ottawa-Carleton, Oxford, Peel, Sudbury	Exclusive
		Lambton	Non-exclusive

SPHERE OF JURISDICTION	PART OF SPHERE ASSIGNED	UPPER-TIER MUNICIPALITY (IES) TO WHICH PART OF SPHERE ASSIGNED	EXCLUSIVE OR NON-EXCLUSIVE ASSIGNMENT
9. Nuisance, noise, odour, vibration, illumination and dust	None	None	
10. Drainage and flood control, except storm sewers	Whole sphere	All upper-tier municipalities	Non-exclusive
11. Structures, including fences and signs	Whole sphere, except fences and signs	Haldimand-Norfolk, Sudbury	Exclusive
		Oxford	Non-exclusive
12. Parking, except on highways	Municipal parking lots and structures	All upper-tier municipalities	Non-exclusive
13. Animals	None	None	

Previous transfer of powers

12. If, on the day before the coming into force of this section, an order under section 25.2 or 25.3 of the *Municipal Act*, a by-law passed under section 209, 209.2 or 209.4 of the *Municipal Act* or a by-law passed under section 41 of the *Regional Municipality of Waterloo Act* or under section 150 of the *Regional Municipalities Act* as they read on that day, was in force, the order or by-law continues despite section 11 and has the same effect as it had on the day before the coming into force of this section.

Council's opinion respecting matters

13. (1) Under the sphere of jurisdiction "health, safety, protection and well-being of people and the protection of property", a municipality may pass by-laws respecting matters that, in the council's opinion, affect or could affect the health, safety, protection and well-being of people or the protection of property.

Same

(2) Under the sphere of jurisdiction "nuisance, noise, odour, vibration, illumination and dust", a municipality may pass by-laws respecting matters that, in the council's opinion, are or could become nuisances.

Opinion final

(3) The opinion of council under this section, if arrived at in good faith, is not subject to review by any court.

Restrictions, systems and facilities of other tier

14. Under each of the following spheres of jurisdiction, a lower-tier or upper-tier municipality does not have the power to pass a by-law prohibiting or regulating with respect to systems of the type authorized by that sphere owned or operated by or on behalf of its upper-tier or lower-tier municipality, as the case may be:

1. Public utilities.
2. Waste management.
3. Transportation systems other than highways.
4. Culture, parks, recreation and heritage.
5. Economic development.
6. Drainage and flood control, except storm sewers.
7. Parking, except on highways.

CONFLICTS

Conflict between certain by-laws

15. (1) If there is conflict between a by-law passed by a lower-tier municipality under section 11 and a by-law passed by its upper-tier municipality under section 11, the by-law of the upper-tier municipality prevails to the extent of the conflict.

Example

(2) Without restricting the generality of subsection (1), there is conflict between by-laws of different tiers if a by-law of the lower-tier municipality renders inoperative an integral part of a facility or service of the upper-tier municipality.

Conflict between by-law and statutes, etc

16. A by-law is without effect to the extent of any conflict with,

- (a) a provincial or federal Act or a regulation made under such an Act; or
- (b) an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation.

RESTRICTIONS AFFECTING MUNICIPAL POWERS

Matters subject to provincial regulation

17. (1) If a matter is subject to provincial regulation, a by-law passed under section 11 or 143 is without effect to the extent that it prohibits or regulates the matter in substantially the same way as or in a more restrictive way than the provincial regulation.

Provincial regulation, definition

(2) In this section,

"provincial regulation" means a provincial Act or regulation made under the Act and an instrument of a legislative nature, including an order, licence or approval, made or issued under the Act or regulation.

Exceptions

(3) This section does not affect the operation of,

- (a) a by-law prohibiting or regulating with respect to systems and facilities owned or operated by or on behalf of the municipality;
- (b) a business licensing by-law, except that this section may affect the conditions imposed on a business licence;
- (c) a by-law prohibiting or regulating with respect to any part of the matter which is not subject to provincial regulation; or
- (d) a by-law to the extent that it is specifically authorized to operate by provincial regulation.

Restrictions, commercial and employment matters

18. Sections 8 and 11 do not authorize a municipality to prohibit or regulate with respect to,

- (a) human rights;
- (b) workplace health and safety;
- (c) the relationship between employers and employees; and
- (d) programs under the *General Welfare Assistance Act*, *Family Benefits Act*, *Day Nurseries Act*, *Ontario Works Act, 1997* and *Ontario Disability Support Program Act, 1997*, the costs of which are shared between the Crown in right of Ontario and municipalities.

Specific powers, by-laws under general powers

19. (1) If a municipality has power to pass a by-law under section 8 or 11 and

also under a specific provision of this or any other Act, the power conferred by section 8 or 11 is subject to any procedural requirements (including conditions, approvals and appeals) which apply to the power and any limits on the power contained in the specific provision.

Application to new and existing provisions

(2) Subsection (1) applies whether the specific provision was enacted before or after,

- (a) the day this section comes into force; or
- (b) the day a by-law passed under section 8 or 11 comes into force.

No retroactive effect

(3) Nothing in this section invalidates a by-law which was passed in accordance with the procedural requirements in force at the time the by-law was passed.

Powers limited to own systems and facilities

20. Under the "public utilities", "waste management" and "transportation systems other than highways" spheres of jurisdiction, a municipality does not have power to pass by-laws regulating or prohibiting with respect to systems owned by or operated by or on behalf of a person other than the municipality.

Restrictions, corporate and financial matters

21. Sections 8 and 11 do not authorize a municipality to,

- (a) incorporate a corporation;
- (b) acquire or guarantee any interest in a security of a corporation;
- (c) impose taxes, fees or charges;
- (d) incur a debt or make investments;
- (e) provide or make contributions for pensions;
- (f) become a bankrupt under the *Bankruptcy and Insolvency Act* (Canada); or
- (g) as an insolvent person, make an assignment for the general benefit of creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada) or make a proposal under section 50 of that Act.

Monopolies

22. A municipality shall not confer on any person the exclusive right of carrying on any business, trade or occupation unless specifically authorized to do so under any Act.

GEOGRAPHIC APPLICATION

By-laws apply within municipal boundaries

23. (1) A by-law of a municipality applies only within its boundaries, subject to subsections (2) and (3) and subject to any other provisions of this or any other Act.

Exception, land outside municipality

(2) A municipality may, for its own purposes,

- (a) acquire land in another municipality or in unorganized territory;
and
- (b) use the land, subject to subsection (3).

Exception, services

(3) A municipality may provide a municipal system to provide a service or thing in another municipality or in unorganized territory if one of the following conditions applies:

- 1. The service or thing is provided only to inhabitants of the municipality providing the service or thing.
- 2. The other municipality is a single-tier municipality and the service or thing is provided with its consent.
- 3. The other municipality is a lower-tier municipality and the service or thing is provided with the consent of,
 - i. the lower-tier municipality, if it has jurisdiction over the service or thing in the area where the service or thing is provided,
 - ii. its upper-tier municipality, if it has that jurisdiction,
 - iii. both the lower-tier municipality and its upper-tier municipality, if they both have that jurisdiction.
- 4. The service or thing is provided in unorganized territory,
 - i. with the consent of a local board that has jurisdiction over the service or thing in the area where the service or thing is provided, or
 - ii. with the consent of the person who receives the service or thing, if no local board has jurisdiction.

AGREEMENTS

Joint undertakings

24. (1) A municipality may enter into an agreement with one or more municipalities to jointly provide, for their joint benefit, any matter which all of them have the power to provide within their own boundaries.

Outside boundaries

(2) The municipality may provide the matter in accordance with the agreement anywhere that all of the municipalities have the power to provide the matter.

Agreements with First Nations

25. (1) A municipality may enter into an agreement with a First Nation to provide a municipal system within the limits of the reserve occupied by the First Nation, whether the reserve is within the municipality or not.

Power

(2) The municipality may provide the system outside its boundaries in accordance with the agreement.

Agreements with province

26. (1) A municipality may provide a system that it would otherwise not have power to provide within the municipality, if it does so in accordance with an agreement with the Crown in right of Ontario under a program established and administered by the Crown.

Power

(2) The municipality may provide the system outside its boundaries in accordance with the agreement.

Outside boundaries

(3) A municipality may provide a system that it has power to provide within the municipality outside its boundaries in accordance with an agreement with the Crown in right of Ontario.

Agreements respecting private services

27. A municipality may enter into an agreement with any person to construct, maintain and operate a private road or a private water or sewage works, including fire hydrants.

HEALTH, SAFETY AND PROTECTION

Smoking in public places, etc.

28. (1) A by-law of a municipality for regulating or prohibiting with respect to the smoking of tobacco shall only apply in public places, workplaces and public transit vehicles within the municipality.

Crown bound

(2) A by-law of a municipality for regulating or prohibiting with respect to the smoking of tobacco binds the Crown.

Restriction

(3) No by-law referred to in subsection (1) shall apply to a highway.

Compliance

(4) A by-law referred to in subsection (1) may require the employer of a workplace or the owner or occupier of a public place to ensure compliance with the by-law.

Upper-tier municipality

(5) An upper-tier municipality may pass a by-law for regulating or prohibiting with respect to the smoking of tobacco in public places, workplaces and public transit vehicles.

Conditions

(6) A by-law under subsection (5) shall not come into force unless,

- (a) a majority of all votes on the council of the upper-tier municipality are cast in its favour;
- (b) a majority of the councils of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes have passed resolutions giving their consent to the by-law; and
- (c) the total number of electors in the lower-tier municipalities which have passed resolutions under clause (b) form a majority of all the electors in the upper-tier municipality.

Provisions apply

(7) Subsections (2) to (4) apply to a by-law passed by an upper-tier municipality under subsection (5).

Conflict with other by-laws

(8) Despite section 15, if there is a conflict between a by-law passed by a lower-tier municipality with respect to the smoking of tobacco and a by-law passed by an upper-tier municipality under subsection (5), the by-law of the upper-tier municipality prevails to the extent of the conflict.

Repeal

(9) A by-law passed by an upper-tier municipality under subsection (5) is repealed if,

- (a) a majority of the councils of all lower-tier municipalities forming part of the upper-tier municipality for municipal purposes rescind giving their consent to the by-law; and

- (b) the total number of electors in the lower-tier municipalities which have rescinded resolutions form a majority of all electors in the upper-tier municipality.

Conflicts

(10) Despite sections 16 and 17, in the event of a conflict between a provision of any Act or regulation and a provision in a by-law passed under this Act for regulating or prohibiting with respect to the smoking of tobacco in a public place, workplace or public transit vehicle, the provision that is the most restrictive of smoking prevails.

Definitions

(11) In this section,

"elector" means a person whose name appears on the voters' list, as amended up until the close of voting on voting day, for the last regular election preceding the coming into force of a by-law under subsection (5); ("électeur")

"public transit vehicle" includes a school bus and a passenger vehicle used for hire.
("véhicule de transport en commun")

Conveyance of prisoners

29. If the attendance of a prisoner in a correctional institution is required at a hearing or proceeding, the municipality that was responsible for delivering the prisoner to the correctional institution is responsible for conveying the prisoner from the correctional institution to the place of the hearing or proceeding and for the prisoner's return.

Detention facilities

30. (1) Subject to the approval of the Solicitor General and Minister for Correctional Services, a municipality may establish, maintain and regulate detention facilities for the detention and imprisonment of,

- (a) persons sentenced to imprisonment for not more than 10 days;
- (b) persons detained for examination on a charge of having committed an offence or for transfer to any correctional institution for the purpose of a trial; and
- (c) persons detained in the execution of any sentence.

Detention

(2) Persons described under subsection (1) may be legally received and detained in the detention facilities.

Constable in charge

(3) A detention facility shall be placed in the charge of a constable appointed by the municipality.

Impounding of vehicles parked on fire route

31. (1) If a municipality passes a by-law designating private roads as fire routes along which no parking of vehicles is permitted, it may provide for the removal and impounding of any vehicle parked or left along any of the fire routes at the expense of the owner and subsection 170 (18) of the *Highway Traffic Act* applies to the by-law.

Definition

(2) In this section,

"private road" means any private road, lane, ramp or other means of vehicular access to or from a building or structure and may include part of a parking lot.

Preventing spread of fire

32. A municipality may, in a by-law passed under the "health, safety, protection and well-being of people and the protection of property" sphere of jurisdiction, provide for pulling down or demolishing buildings or other erections when considered necessary to prevent the spread of fire.

PUBLIC UTILITIES

Entry on land, water utility purposes

33. (1) For the purposes of a water public utility provided by a municipality, the municipality may, at reasonable times, subject to section 23 and despite section 66, enter on municipal highways in or outside of the municipality to install, construct and maintain pipes and other works for the distribution of water without the consent of the municipality which owns the highway.

Entry on highways, public utility purposes

(2) For the purposes of a public utility provided by a municipality, other than a water public utility, the municipality may, at reasonable times, despite section 66, enter on municipal highways in the municipality to install, construct and maintain pipes, wires, poles, equipment, machinery and other works without the consent of the municipality which owns the highway.

Entry into buildings

34. (1) If a municipality has the necessary consent of an owner or occupant to connect a public utility to a part of a building and other parts of the building belong to different owners or are in the possession of different occupants, the municipality may, at reasonable times, without consent, enter on their land and install, construct and maintain pipes, wires, equipment, machinery and other works necessary to make the connection.

Entry on common passages

(2) If a municipality has the necessary consent of an owner or occupant to connect a public utility to land and the owner or occupant shares a mutual driveway or other common passage with the owners or occupants of neighbouring land, the municipality may, at reasonable times, without consent, enter the common passage and install, construct and maintain pipes, wires, equipment, machinery and other works

necessary to make the connection.

Entry on land served by public utility

35. (1) A municipality may, at reasonable times, enter on land to which it supplies a public utility,

- (a) to inspect, repair, alter or disconnect the service pipe or wire, machinery, equipment and other works used to supply the public utility; or
- (b) to inspect, install, repair, replace or alter a public utility meter.

Reduced supply

(2) For the purposes of subsection (1), a municipality may shut off or reduce the supply of the public utility to the land.

Entry on land, discontinuance of utility

(3) If a customer discontinues the use of a public utility on land or a municipality lawfully shuts off the supply of the public utility to land, the municipality may enter on the land,

- (a) to shut off the supply of the public utility;
- (b) to remove any property of the municipality; or
- (c) to determine whether the public utility has been or is being unlawfully used.

Shut off of public utility

36. (1) A municipality may shut off the supply of a public utility to land if fees and charges payable by the owners or occupants of the land for the supply of the public utility to the land are overdue.

Additional power

(2) In addition to the power under subsection (1), a municipality may shut off the supply of water to land if fees and charges payable by the owners or occupants of the land in respect of a sewage system are overdue and the fees and charges are based on the fees payable for the supply of water to the land.

Notice

(3) Despite subsections (1) and (2), a municipality shall provide reasonable notice of the proposed shut off to the owners or occupants of the land who are responsible for the overdue fees or charges by personal service or prepaid mail or by posting the notice on the land in a conspicuous place.

Recovery of fees

(4) A municipality may recover all fees and charges payable despite shutting off

the supply of the public utility.

No liability for damages

37. (1) A municipality is not liable for damages caused by the interruption or reduction of the amount of a public utility supplied to a municipality or to the land of any person as a result of an emergency or a breakdown, repair or extension of its public utility if, in the circumstances, reasonable notice of its intention to interrupt or reduce the supply is given.

Allocation

(2) If the supply of a public utility to a municipality is interrupted or reduced, the municipality may allocate the available public utility among its customers.

Effect

(3) Nothing done under subsection (2) shall be deemed to be a breach of contract, to entitle any person to rescind a contract or to release a guarantor from the performance of the guarantor's obligation.

Time limitation

38. No action or other proceeding shall be instituted against any person for anything done in establishing, maintaining or operating a public utility more than 6 months after the cause of action arose or, in the case of continuing damages, more than 12 months after the original cause of action arose.

Financing details not required

39. Despite any Act, the Ontario Municipal Board is not required to consider how a municipality intends to finance any part of a public utility when it is hearing and determining an application of the municipality for approval of that part.

Exemption from seizure

40. Personal property of a municipality which is used for or in connection with the supply of a public utility to land is exempt from seizure,

- (a) against the owner or occupant of the land under the *Execution Act*; and
- (b) against a person with a leasehold interest in the land for overdue rent.

Mandatory supply

41. Despite section 23, a municipality shall supply a building with a public utility if,

- (a) the building lies along the supply line of the public utility;
- (b) there is sufficient supply of the public utility; and;
- (c) the owner, occupant or other person in charge of the building

requests the supply in writing.

Definition

42. (1) In this section,

"work" means land, buildings, structures, plant, machinery, equipment, devices, conduits, intakes, outfalls or outlets and other works used or designed for the collection or treatment of sewage or the production, treatment, storage or distribution of water.

Assumption by upper-tier municipality

(2) An upper-tier municipality may assume a work vested in or operated by or on behalf of any of its lower-tier municipalities or local boards of its lower-tier municipalities if the upper-tier municipality,

- (a) has the authority to operate and maintain the assumed work;
- (b) has established a system of works of which the assumed work will form a part; and
- (c) is of the opinion that the work is of upper-tier significance.

Same

(3) If an upper-tier municipality assumes a work,

- (a) the upper-tier municipality stands in place of the lower-tier municipality or local board for the purpose of an agreement relating to the work and the lower-tier municipality or local board is relieved of all liability under the agreement; and
- (b) the upper-tier municipality shall pay to the lower-tier municipality or local board, before the due date, all amounts becoming due upon any debt of the lower-tier municipality or local board, as the case may be, in respect of the work.

Entry on land, inspection of works

(4) An upper-tier municipality may, for its purposes and upon reasonable notice to a lower-tier municipality, enter upon land to inspect works of the lower-tier municipality and to inspect and copy plans, records, specifications and other information relating to the construction, operation and maintenance of the works.

Entry on land, inspection, tests

43. (1) In order to obtain information that a municipality considers necessary to determine whether it wishes to acquire land for the purposes of the production, treatment, storage or distribution of water, the municipality may, at reasonable times, enter on and inspect the land, including conducting tests of the land and removing samples or extracts.

Limitation

(2) Subsection (1) does not allow a municipality to enter any building.

Plan respecting capital expenditures

44. A municipality shall prepare and maintain a plan for public inspection setting out its proposed capital expenditures related to water and sewage public utilities for the next five years.

Dual authority

45. If a lower-tier municipality and its upper-tier municipality both have the authority to distribute water in the lower-tier municipality,

- (a) the upper-tier municipality shall not supply water to any person in the lower-tier municipality except the lower-tier municipality; and
- (b) in the case of The Regional Municipality of York, the lower-tier municipality shall not, without the consent of the regional municipality, purchase water from any municipality except the regional municipality.

Exemption from levy

46. (1) Land which is exempt from taxation under the *Assessment Act* is not exempt from a special upper-tier levy under section 281 or a special local municipality levy under section 282 for raising costs related to sewage works or water works.

Exemption by municipality

(2) Despite subsection (1), the upper-tier municipality and the local municipality, as the case may be, may exempt any class of land from all or part of the levy described in that subsection.

New parcels of land

(3) Despite any Act, if new parcels of land are created from existing parcels of land in respect of which a municipality has imposed a tax or fee to raise costs related to sewage works or water works, the municipality may impose the tax or fee on each new parcel.

Definition

47. (1) In this section,

"public utility" includes a street lighting system and a transportation system.

Easement

(2) An easement of a public utility provided by a municipality does not have to be appurtenant or annexed to or for the benefit of any specific parcel of land to be valid.

Restriction

(3) Part III of the *Registry Act* does not apply to a claim of a person in respect of

a part of a municipal public utility constructed on land before June 21, 1990 with the consent or acquiescence of the owner of the land.

Interference with utilities

(4) No person shall interfere with a part of a municipal public utility for which there is no municipal public utility easement unless,

- (a) the municipality consents; or
- (b) the interference is authorized by a court order under this section.

Court orders with respect to utilities

(5) The Ontario Court (General Division) may make an order authorizing interference with a part of a municipal public utility on the application of a person who has an interest in the land where the part is located if the use of the land by the person is substantially affected.

Notice

(6) A person making an application for an order under subsection (5) in respect of a part of a municipal public utility shall give the municipality 90 days notice of the application or such other notice as the court may direct.

Other orders

(7) In making an order under subsection (5), the court may make such other orders as it considers necessary including an order that the applicant provide an easement for the alternative location of the public utility for such compensation as the court may determine.

Stay of orders

(8) The court shall stay an order under subsection (5) at the request of the municipality for such time as the court determines to allow the municipality to acquire an interest in land to accommodate the part of its public utility that is subject to the order.

Right to repair utilities

(9) Subject to any court order under this section, a municipality may enter upon any land to repair and maintain its public utilities.

Utilities located by mistake

(10) If, before June 21, 1990 a municipality located a part of a municipal public utility where it had no right to do so in the mistaken belief that the part was being located on a municipal road allowance, the municipality that owns and operates the utility shall be deemed to have an easement in respect of the utility and the owner of the land on which the part is located shall be entitled to compensation for the easement determined in accordance with the *Expropriations Act*.

Offence

(11) Every person who knowingly contravenes subsection (4) is guilty of an

offence.

Fines, discharge into sewer

48. (1) A municipality may, in a by-law prohibiting or regulating the discharge of any matter into a sewage system, provide that a person who contravenes the by-law is guilty of an offence and on conviction is liable,

- (a) on a first conviction, to a fine of not more than \$10,000; and
- (b) on any subsequent conviction, to a fine of not more than \$20,000.

Corporations

(2) Despite subsection (1), where the person convicted is a corporation, the maximum fines in clauses (1) (a) and (b) are \$50,000 and \$100,000, respectively.

PUBLIC UTILITY COMMISSIONS

Definitions

49. In this section and sections 50 to 57,

"public utility commission" means a commission established or deemed to have been established under the *Public Utilities Act* before or after this section comes into force; ("commission de services publics")

"municipality" means, in relation to a public utility commission, the municipality of which the commission is a local board; ("municipalité")

"public utility" includes a public transportation system and any other system of a municipality, the control and management of which have been given to a public utility commission under any Act. ("service public")

Commissions continued

50. (1) A public utility commission which existed on the day before this section came into force continues with the same name and composition and has the control and management of the same public utilities as it had on that day.

Restrictions

(2) Despite any Act, after the day this section comes into force, a municipality shall not,

- (a) establish a commission except a commission for the control and management of an electric public utility;
- (b) give the control and management of a public utility to a commission except an electric public utility commission established after the day this section came into force;
- (c) remove the control and management of a public utility from a

commission except under section 186;

- (d) dissolve a commission except under section 189.

Exception

(3) Clause (2) (c) does not apply to an electric public utility and clause (2) (d) does not apply to a commission which has the control and management of an electric public utility.

Corporation

- 51. (1) A public utility commission is a body corporate.

Composition

(2) A commission shall consist of three or five members as determined by the municipality,

- (a) one of whom shall be the head of the council of the municipality; and
- (b) the others of whom shall be elected by general vote under the *Municipal Elections Act, 1996* or, where a commission does not serve the whole municipality, by general vote of the voters in the part of the municipality served by the commission.

Change of composition

(3) A by-law of the municipality changing the number of members of a commission does not come into force until the day the newly-elected commission is organized,

- (a) after the first regular election following the passing of the by-law; or
- (b) if the by-law is passed in the year of a regular election before voting day, after the second regular election following the passing of the by-law.

Conduct of election

(4) The regular election held immediately before the coming into force of a by-law changing the number of members shall be conducted as if the by-law was already in force.

Application

(5) Except as otherwise provided, sections 213, 215, 216, 219, 223 and 225 apply with necessary modifications to a commission and its elected members as if they were the council of a local municipality and its members, respectively.

Vacancies

- 52. (1) If the office of an elected member of a public utility commission becomes

vacant, the commission shall at its next meeting declare the office to be vacant.

Notification

(2) If a commission declares the office of one of its members to be vacant, the commission shall immediately forward a copy of its declaration to the municipality.

Filling of vacancy

(3) The municipality shall, within 60 days after the day the declaration of vacancy is made, fill a vacancy in the office of an elected member of a public utility commission by appointing a person who has consented to accept the office if appointed.

Term

(4) A person appointed to fill a vacancy shall hold office for the remainder of the term of the person he or she replaced.

Quorum

53. A majority of the members of a public utility commission constitutes a quorum.

By-laws re: public utility

54. (1) A public utility commission may pass by-laws to acquire, establish, construct, maintain and operate a public utility under its control and management on behalf of the municipality and for these purposes sections 5, 23, 24 to 27, 33 to 41, 43 to 45 and 48 and Part XV, except sections 389, 390, 392, 396 and 398, and Parts XVI and XVII apply with necessary modifications to a commission.

Use and supply

(2) A commission may pass by-laws to regulate with respect to the use and supply of a public utility under its control and management.

Restriction

(3) The municipality cannot exercise the powers described in subsections (1) and (2) for so long as the public utility is under the control and management of the commission.

Limitation

(4) Nothing in this section,

- (a) authorizes a commission to provide for the financing of the public utility other than by fees and charges under Part XIII;
- (b) removes the power from the municipality to provide the money required for financing the public utility as if it had control and management of the public utility; or
- (c) authorizes a commission, without the consent of the municipality,

- (i) to exercise any of its powers in any other municipality or in unorganized territory,
- (ii) to supply the public utility to any other municipality or to a person in any other municipality or in unorganized territory,
- (iii) to extend, enlarge, improve or alter the public utility if any part of the cost is to be provided out of surplus revenues described in section 55, or
- (iv) to sell, lease or otherwise dispose of the whole of the public utility or all or part of the real or personal property related to the public utility.

Revenues

55. (1) Despite any Act, a public utility commission shall use the revenues generated by a public utility for the operation and maintenance of the public utility and for the establishment of reserve funds authorized by the municipality for the purposes of the public utility.

Surplus

(2) After providing for the expenditures under subsection (1), a commission shall, when required by the municipality, pay all or part of the surplus revenues to the municipality and the amount paid forms part of the general funds of the municipality.

Remuneration

56. The municipality shall establish the remuneration of the members of the public utility commission.

Records

57. (1) A public utility commission shall maintain,

- (a) separate financial records for each public utility; and
- (b) records of the by-laws, resolutions, decisions and other proceedings of the commission.

Inspection

(2) A municipality is entitled to inspect the records of the commission upon request.

Information to be provided

(3) A commission shall, at the times and in the form requested, provide the municipality with information requested by the municipality related to a public utility.

WASTE MANAGEMENT

Designation of services, facilities

58. (1) An upper-tier municipality may designate any of its waste management services or facilities for the management of waste or any class of waste of any of its lower-tier municipalities for which it has the power to provide the service or facility.

Effect of designation

(2) If a designation has been made, the lower-tier municipality shall not utilize any services or facilities of the upper-tier municipality or any other person for the management of the designated waste other than the services or facilities that have been designated for that lower-tier municipality.

Non-application

59. The *Municipal Franchises Act* does not apply to a municipality recovering, manufacturing, producing, supplying, selling or distributing any product from sewage or waste.

Entry and inspection

60. (1) For the purpose of obtaining information that a municipality considers necessary for the municipality to meet the requirements of or to obtain an approval under any Act relating to the planning, establishment, operation, management, alteration or improvement of a waste disposal site or any other waste management facility, the municipality may, at reasonable times, enter on and inspect any land, including conducting tests of the land and removing samples or extracts.

Restriction

(2) Subsection (1) does not allow a municipality to enter any building.

Fines relating to waste

61. (1) A municipality may, in a by-law prohibiting or regulating any matter passed under the "waste management" sphere of jurisdiction, provide that a person who contravenes the by-law is guilty of an offence and on conviction is liable,

(a) on a first conviction, to a fine of not more than \$10,000; and

(b) on any subsequent conviction, to a fine of not more than \$20,000.

Corporations

(2) Despite subsection (1), where the person convicted is a corporation, the maximum fines in clauses (1) (a) and (b) are \$50,000 and \$100,000, respectively.

Waste

62. (1) Despite the repeal of section 208.3 and subsections 209 (10), (12) and (13) of the *Municipal Act*, sections 151 and 152 of the *Regional Municipalities Act*, section 36 of the *Regional Municipality of Durham Act*, section 41 of the *Regional Municipality of Haldimand-Norfolk Act*, section 34 of the *Regional Municipality of Halton Act*, sections 53 and 54.1 of the *Regional Municipality of Ottawa-Carleton Act*,

sections 40 and 41 of the *Regional Municipality of Waterloo Act* and section 33 of the *Regional Municipality of York Act*,

- (a) any term, restriction or condition imposed by a municipality or the Ontario Municipal Board on an approval or consent under those sections continues to apply, and
- (b) those provisions, as they read on the day before their repeal under this Act, continue to apply for the purpose of making an appeal to the Ontario Municipal Board under them.

By-laws re: waste, counties

(3) Despite the repeal of subsections 209 (15) to (18) and (25) to (29) of the *Municipal Act*, those subsections, as they read on the day before their repeal under this Act, continue to apply to by-laws passed under subsection 209 (2) of that Act before this Act came into force.

By-laws re: waste, regions

(3) Despite the repeal of sections 153, 157, 158 and 159 of the *Regional Municipalities Act*, those sections, as they read on the day before their repeal under this Act, continue to apply to by-laws passed or deemed to have been passed under section 150 of that Act before this Act came into force, including by-laws made under that section as incorporated into other Acts by subsection 126 (7) of the *County of Oxford Act* and section 128 of the *District Municipality of Muskoka Act* as they read immediately before their repeal.

By-laws re: waste, Waterloo

(4) Despite the repeal of clauses 41 (3) (d), (e) and (f) of the *Regional Municipality of Waterloo Act*, those clauses, as they read on the day before their repeal under this Act, continue to apply to by-laws passed under section 41 of that Act before this Act came into force.

HIGHWAYS

Definitions

63. In sections 64 to 98,

"lower-tier highway" means a highway under the jurisdiction of a lower-tier municipality; ("voie publique de palier inférieur")

"upper-tier highway" means a highway under the jurisdiction of an upper-tier municipality. ("voie publique de palier supérieur")

Provincial highways

64. Sections 64 to 98 do not apply to highways over which the Province of Ontario has jurisdiction.

What constitutes highway

65. The following are highways unless they have been closed:

1. All roads that were highways on the day this section came into force.
2. All highways established by by-law of a municipality after the day this section came into force.
3. All highways transferred to a municipality under the *Public Transportation and Highway Improvement Act*.
4. All road allowances made by the Crown surveyors.
5. All road allowances, highways, streets and lanes shown on a registered plan of subdivision.

By-laws

66. (1) Except as otherwise provided in this Act, a municipality may pass by-laws in respect of a highway only if it has jurisdiction over the highway.

Joint jurisdiction

(2) If a highway is under the joint jurisdiction of two or more municipalities, a by-law in respect of the highway must be passed by all of the municipalities having jurisdiction over the highway.

Jurisdiction

67. (1) Except as otherwise provided in this Act or under sections 8 and 29 of the *Public Transportation and Highway Improvement Act*, a municipality has jurisdiction or joint jurisdiction, as the case may be, over the following highways:

1. All highways over which it had jurisdiction or joint jurisdiction on the day this section came into force.
2. All highways established by by-law of the municipality after this section came into force.
3. All highways transferred to the municipality under this Act, the *Public Transportation and Highway Improvement Act* or any other Act.

Local municipalities

(2) Except as otherwise provided in this Act or under sections 8 and 29 of the *Public Transportation and Highway Improvement Act*, a local municipality has jurisdiction over,

- (a) all road allowances located in the municipality that were made by the Crown surveyors; and

- (b) all road allowances, highways, streets and lanes shown on a registered plan of subdivision.

Boundary lines

68. (1) Subject to section 67 and to a by-law passed under section 84, the local municipalities on either side of a boundary line between municipalities have joint jurisdiction over any highways forming the boundary line.

Joint jurisdiction, bridges

(2) Subject to section 67 and to a by-law passed under section 84, if a bridge joins a highway under the jurisdiction of any municipality to a highway under the jurisdiction of another municipality, the bridge is under the joint jurisdiction of the municipalities.

Deviation of boundary lines

(3) If, because of physical difficulties or obstructions, a highway does not follow a boundary line throughout but deviates so that parts of it lie wholly within one of the boundary municipalities, for the purposes of this Act the highway shall be deemed to be the boundary line between the two municipalities.

Agreement

(4) If municipalities having joint jurisdiction over a boundary line highway enter into an agreement under which each municipality agrees to keep any part of the highway in repair for its whole width and to indemnify the other municipality from any loss or damage arising from the lack of repair for that part, the agreement and a copy of the by-law authorizing the agreement may be registered in the proper land registry office for the area in which the highway is located.

Registration

(5) If municipalities enter into an agreement under subsection (4), each municipality has jurisdiction over that part of the highway that it has agreed to keep in repair and is liable for any damages that arise from failure to keep the highway in repair and the other municipality is relieved from all liability in respect of the repair of that part.

Ownership

69. A highway is owned by the municipality which has jurisdiction over it subject to any rights reserved by a person who dedicated the highway or any interest in the land held by any other person.

Establishing highways

70. (1) A municipality may by by-law establish a highway.

Limitation

(2) After the day this section comes into force, a municipality may only give land the status of a highway by by-law passed under subsection (1).

Assuming highways for public use

(3) A municipality may pass a by-law assuming for public use the following highways and section 76 does not apply to the highways until the municipality has passed the by-law:

1. An unopened road allowance made by the Crown surveyors.
2. A road allowance, highway, street and lane shown on a registered plan of subdivision.
3. A highway or bridge built by any person other than the municipality before this section came into force unless it was established by by-law of the municipality or otherwise assumed for public use by the municipality before this section came into force.

Repeal

(4) A by-law under subsection (1) or (3) may only be repealed by a closing by-law under section 71.

Highway closing procedures

71. (1) A municipality may close or alter a highway but, before passing a by-law for permanently closing or altering a highway, shall give public notice of the by-law in the manner set out in a notice by-law passed under section 246.

Variations

(2) The manner in which notice is given under subsection (1) may be different for different classes of closings and for different classes of highways.

Registration

(3) A by-law for permanently closing a highway does not take effect until a certified copy of the by-law closing the highway is registered in the proper land registry office.

Consent

(4) A by-law permanently closing a highway shall not be passed without the consent of the Governor General in Council if the highway,

- (a) abuts on land, including land covered by water, owned by the Crown in right of Canada; or
- (b) leads to or abuts on a bridge, wharf, dock, quay or other work owned by the Crown in right of Canada.

Right of access protected

(5) A by-law to permanently close or alter a highway is not valid if it has the effect of depriving a person of the sole means of access to and from the person's land or residence over the highway unless the person agrees to the by-law.

Closing of private roads

(6) A by-law of a municipality requiring an owner of land to close up a private road, entrance, gate or other structure legally constructed or legally being used as a means of access to a highway on the date of the passing of the by-law is not valid unless the owner agrees to the by-law.

Where no agreement

(7) Despite subsections (5) and (6), if a person fails to agree to a by-law under those subsections, the municipality may apply to the Municipal Board and the Municipal Board, after hearing the parties, may confirm, vary or rescind the by-law and may impose limitations and conditions respecting the closing of the highway or private road, entrance, gate or other structure.

Prohibiting motor vehicles on highway

72. If a municipality passes a by-law permanently prohibiting all motor vehicle traffic from using a highway for its whole width, section 71 applies to the by-law.

Seasonal highways

73. (1) A municipality may, after giving public notice of the by-law in the manner set out in a notice by-law passed under section 246, declare a highway to be a seasonal highway and close the highway each year for the time period set out in the by-law.

Maintenance

(2) If a municipality passes a by-law under subsection (1), section 76 does not apply to the highway during the time period when the highway is closed.

Delegation

74. (1) A municipality may delegate to a committee of council or to an employee of the municipality, subject to any conditions which the municipality may impose, the power to close a highway temporarily for any purpose specified in the by-law.

Limitation

(2) Subsection (1) does not apply to the power to close a highway under subsection 73 (1).

Conveyance of closed highway

75. A municipality that permanently closes a highway shall not convey the land forming the highway if it is covered with water unless the conveyance is to the Crown in right of Ontario.

Maintenance

76. (1) The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge.

Liability

(2) In case of default the municipality, subject to the *Negligence Act*, is liable for

all damages any person sustains because of the default.

Defence

(3) A municipality is not liable under subsection (1) or (2) for failing to keep a highway or bridge in a reasonable state of repair if,

- (a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
- (b) it took reasonable steps to prevent the default from arising; or
- (c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met.

Regulations

(4) The Minister of Transportation may make regulations establishing minimum standards of repair for highways and bridges or any class of them.

Same

(5) The minimum standards may be general or particular in their application.

Adoption by reference

(6) A regulation made under subsection (4) may adopt by reference, in whole or in part, with such changes as the Minister considers desirable, any code, standard or guideline, as it reads at the time the regulation is made or as it is amended from time to time, whether before or after the regulation is made.

Limitation on actions

(7) No action shall be brought against a municipality for damages for lack of repair, even if the municipality was at fault, after the expiration of three months from the time the damages were sustained.

Untravelled portions of highway

(8) No action shall be brought against a municipality for damages caused by,

- (a) the presence, absence or insufficiency of any wall, fence, rail or barrier along or on any highway; or
- (b) any construction, siting or arrangement of any earth, rock, tree or other material or object adjacent to or on any untravelled portion of a highway, whether or not an obstruction is created due to the construction, siting or arrangement.

Sidewalks

(9) Except in case of gross negligence, a municipality is not liable for a personal injury caused by snow or ice on a sidewalk.

Notice

(10) No action shall be brought for the recovery of damages under subsection (2) unless, within 10 days after the occurrence of the injury, written notice of the claim and of the injury complained of has been served upon or sent by registered mail to,

- (a) the clerk of the municipality; or
- (b) if the claim is against two or more municipalities jointly responsible for the repair of the highway or bridge, each of the clerks of those municipalities.

Exception

(11) Failure to give notice is not a bar to the action in the case of the death of the injured person.

Same

(12) Failure to give notice or insufficiency of the notice is not a bar to the action if the court finds that the municipality was not prejudiced by the lack or insufficiency of the notice and that to bar the action would be unjust, even if a reasonable excuse for the lack or insufficiency of notice is not established.

Exception

(13) Subsection (12) does not apply to an injury caused by snow or ice on a sidewalk.

Non-application

(14) This section does not apply to,

- (a) an unopened road allowance made by the Crown surveyors;
- (b) a road allowance, highway, street or lane shown on a registered plan of subdivision unless it is assumed for public use by the municipality; or
- (c) a highway or bridge built by any person before this section came into force unless it is established by by-law or assumed for public use by the municipality.

No responsibility for acts of others

(15) Nothing in this section imposes any obligation or liability on a municipality for an act or omission of a person acting under a power conferred by law over which the municipality had no control unless,

- (a) the municipality participated in the act or omission; or
- (b) the power under which the person acted was a by-law, resolution or licence of the municipality.

No liability

(16) A municipality is not liable for damages under this section unless the person claiming the damages has suffered a particular loss or damage beyond what is suffered by that person in common with all other persons affected by the lack of repair.

Nuisance

77. Section 76 applies to an action brought against a municipality for damages that result from the presence of any nuisance on a highway.

Mistakes

78. (1) If, before this section came into force, a municipality by mistake opened a highway not wholly upon the original road allowance, the land occupied by the highway shall be deemed to have been expropriated by the municipality and no person on whose land the highway was opened may bring an action in respect of the opening of the highway or to recover possession of the land.

Compensation

(2) The person on whose land the highway was opened is entitled to compensation in accordance with the *Expropriations Act* as if the land were expropriated.

Highways not opened on original road allowance

79. (1) If, before this section came into force, a highway was opened on land in the place of all or part of an original road allowance and compensation was not paid for the land, the owner of the land appropriated for the highway is entitled to the following:

1. If that person owns the land abutting on the allowance, the owner is entitled to the soil and freehold of the original road allowance and to a conveyance of it.
2. If that person does not own the land abutting on the allowance and if the allowance is sold by the municipality, the owner is entitled to the part of the purchase price that bears the same proportion to the whole purchase price as the value of the part of the land occupied by the highway that belonged to the owner bears to the value of the land occupied by the highway.

Multiple owners

(2) If the land abutting on the original road allowance is owned by more than one person, each person is entitled to the soil and freehold of and a conveyance of that part of the allowance abutting their land to the middle line of the allowance.

Person in possession

80. (1) If, before this section came into force, a person opened a highway in place of an original road allowance without receiving compensation for the land and the person is in possession of all or part of the original road allowance, that person is entitled to the soil and freehold of the allowance or part of it and to a conveyance of it.

Multiple owners

(2) If more than one person is in possession of the road allowance, each person is entitled to the soil and freehold of and a conveyance of that part of the allowance abutting their land to the middle line of the allowance.

Condition

(3) This section only applies if the highway has been adopted by by-law of the municipality or otherwise assumed by the municipality and in the opinion of the council of the municipality the original road allowance is not needed by the municipality.

Naming private roads

81. A local municipality may name a private road.

Disabled parking permits

82. If a municipality passes a by-law for establishing a system of disabled parking, the sole manner of identifying vehicles shall be a disabled parking permit issued under and displayed in accordance with the *Highway Traffic Act* and the regulations made under it.

Restriction, motor vehicles

83. A municipality does not have power to pass a by-law establishing a system of permits for motor vehicles or trailers similar to the system under the *Highway Traffic Act*.

Jurisdiction, upper-tier municipality

84. (1) An upper-tier municipality may add a lower-tier highway, including a boundary line highway, to its highway system from any of its lower-tier municipalities.

Boundary line

(2) An upper-tier municipality may add to its highway system such highways forming the boundary line between the upper-tier and an adjoining municipality as are agreed upon between them, in which case the upper-tier municipality and the adjoining municipality have joint jurisdiction over the highways.

Jurisdiction

(3) If a highway forms part of the upper-tier highway system, the upper-tier municipality has jurisdiction over the highway.

Removal

(4) An upper-tier municipality may remove a highway, including a boundary line highway, from its system.

Effect of removal

(5) If a highway is removed from an upper-tier highway system, it is under the jurisdiction of the lower-tier municipality in which the highway is located.

Joint jurisdiction

(6) If a highway that forms the boundary line between two lower-tier municipalities forming part of the same upper-tier municipality is removed from an upper-tier highway system, section 68 applies.

Same

(7) If a highway that forms the boundary line between an upper-tier municipality and an adjoining municipality is removed from the upper-tier highway system, the lower-tier municipality in which the highway is located and the adjoining municipality have joint jurisdiction over the highway.

Transfer of jurisdiction

85. If jurisdiction over a highway or bridge is transferred from one municipality to another municipality under section 84,

- (a) the municipality to which jurisdiction over the highway has been transferred stands in the place of the transferor under any agreement in respect of the highway; and
- (b) if jurisdiction over the highway has been transferred from a lower-tier municipality to its upper-tier municipality, the upper-tier municipality shall pay to the lower-tier municipality, before the due date, all amounts becoming due upon any debt of the lower-tier municipality in respect of the highway.

Extent of bridge

86. An upper-tier municipality that had jurisdiction over a bridge on a lower-tier highway on the day this section came into force continues to have jurisdiction over the approaches to it for 30 metres at each end of the bridge or any other distance agreed upon by the upper-tier municipality and the lower-tier municipality.

Upper-tier sidewalks

87. (1) An upper-tier municipality is not responsible for the construction and maintenance of sidewalks on its highways and the lower-tier municipality in which the highways are located is responsible for the construction and maintenance of the sidewalks, unless the municipalities agree otherwise.

Injury, damages

(2) A lower-tier municipality that is responsible for the construction and maintenance of the sidewalks on upper-tier highways is liable for any injury or damage arising from the construction or presence of the sidewalk to the same extent and subject to the same limitations to which a municipality is liable under section 76 in respect of a sidewalk on its own highway.

Improvements on upper-tier highways

(3) A lower-tier municipality may, with the agreement of the upper-tier municipality, construct a sidewalk, storm sewer or other improvement or service on an upper-tier highway and the lower-tier municipality is liable for any injury or damage arising from the construction or presence of the sidewalk, storm sewer, improvement

or service.

Intersections

88. Where an upper-tier highway intersects a lower-tier highway, the continuation of the upper-tier highway to its full width across the lower-tier highway intersected is an upper-tier highway.

Closing lower-tier highways

89. (1) An upper-tier municipality may close or alter a lower-tier highway that intersects or runs into an upper-tier highway with the agreement of the lower-tier municipality.

Failure to agree

(2) If the municipalities are unable to agree, either municipality may apply to the Ontario Municipal Board for approval of the road closing or alteration.

Board order

(3) The Board may by order refuse or grant its approval to the closing or alteration of the highway and may provide for,

- (a) the portion of the highway to be closed or altered;
- (b) the terms of the closing or alteration; and
- (c) the doing of such other acts by the municipalities as the Board considers appropriate.

Zoning restrictions

90. (1) An upper-tier municipality has, in respect of land lying within 45 metres from any limit of an upper-tier highway, all the powers conferred on a local municipality under section 34 of the *Planning Act*.

Conflicts

(2) If there is a conflict between a by-law passed by an upper-tier municipality under subsection (1) and a by-law passed by a lower-tier municipality under section 34 of the *Planning Act*, the by-law of the upper-tier municipality prevails to the extent of the conflict, but in all other respects the by-law passed by the lower-tier municipality remains in effect.

Entry on land, snow fences

91. (1) Despite section 23, a municipality may enter upon any land within the municipality or within an adjoining municipality and lying along any highway under its jurisdiction, including land owned by Her Majesty in Right of Ontario, for the purpose of erecting and maintaining a snow fence.

Restoration of land

(2) When the fence is removed, the municipality shall as far as practicable, restore the land to the condition that it was in before the fence was erected.

Entry on land, naming highways

92. (1) A municipality may enter upon land lying along a highway to install and maintain a sign setting out the name of a highway.

Private roads

(2) If a local municipality has passed a by-law under section 81 to name a private road, the municipality may enter upon land lying along the private road to install and maintain a sign setting out the name of the road.

Entry on land, affixing numbers to buildings, etc.

93. If a municipality has passed a by-law for the establishment or operation of a centralized communication system for the provision of emergency response services, the municipality may enter upon land for the purpose of affixing numbers to buildings or erecting signs setting out numbers on land.

Entry on land, removal of snow from roofs

94. A municipality may enter upon any land to remove snow and ice from the roofs of any designated class of buildings on land adjacent to a highway at the expense of the owners and may recover its expenses in the manner provided for in section 380.

Entry

95. A municipality entering upon land under sections 91 to 94 may enter upon the land at any reasonable time after giving the owner and the occupant of the land reasonable notice in accordance with section 385 of its intention to enter the land.

Impounding of objects, vehicles on highway

96. (1) If a municipality passes a by-law for prohibiting or regulating with respect to the placing, stopping, standing or parking of an object or vehicle on a highway, it may provide for the removal and impounding of any object or vehicle placed, stopped, standing or parked on a highway in contravention of the by-law and subsection 170 (15) of the *Highway Traffic Act* applies with necessary modifications to the by-law.

Perishable objects

(2) Any perishable object in the object or vehicle removed from the highway is the property of the municipality upon being moved from the highway and may be destroyed or given to a charitable institution.

Unorganized territory

97. (1) A township in a territorial district, other than in an upper-tier municipality, surveyed without road allowances may establish and open highways, where necessary, on land in which five per cent of the land is reserved for highways and the provisions of this Act as to compensation for lands taken or injuriously affected by the exercise of the powers conferred by this section do not apply.

Definition

(2) In this section,

"township" means a local municipality which had the status of a township on the day before this section came into force.

No personal liability

98. (1) No proceeding shall be commenced against a member of council or an officer or employee of the municipality for damages based on the default of the municipality in keeping a highway or bridge in a state of repair that is reasonable in light of all of the circumstances, including the character and location of the highway or bridge.

Exception, contractors

(2) Subsection (1) does not apply to a contractor with the municipality, including any officer or employee who is acting as a contractor, whose act or omission caused the damages.

TRANSPORTATION

Prohibition

99. (1) A local municipality may by by-law provide that no person except the local municipality shall operate a passenger transportation system within all or that part of the municipality designated in the by-law.

Exception with approval

(2) A local municipality that has passed a by-law under subsection (1) may, subject to the *Municipal Franchises Act*, give approval to any person to operate a passenger transportation system within all or part of the designated area under such conditions as the municipality provides.

Exceptions

(3) A by-law under this section does not apply to the following passenger transportation systems:

1. Vehicles and marine vessels used for sightseeing tours.
2. Vehicles exclusively chartered to transport a group of persons for a specific trip within the municipality for compensation.
3. Buses used to transport pupils, including buses owned and operated by, or operated under a contract with, a school board, private school or charitable organization.
4. Buses owned and operated by a corporation or organization solely for its own purposes without compensation for transportation.
5. Cabs.
6. Railway companies incorporated under federal or provincial statutes.

7. Ferries.

8. Aviation systems.

Outside municipal boundaries

(4) A local municipality may, despite section 23 and subject to the *Public Vehicles Act*, establish, operate and maintain a passenger transportation system between any point within the municipality and any point outside the municipality, including outside Ontario.

Limitation

(5) Nothing in this section prevents a person from operating a passenger transportation system that is used to convey property and passengers through an area designated by a municipality under subsection (1), from a point within the designated area to a point outside the designated area or from a point outside the designated area to a point inside the designated area.

Continuation

100. (1) A commission or local board of a local municipality which operated a passenger transportation system under any other Act on the day before this Act came into force is continued.

Management

(2) The control and management of the passenger transportation system shall be deemed to have been delegated by the local municipality to that commission or local board.

Bus franchise

101. (1) Despite sections 22 and 125, a municipality may enter into an agreement under the sphere of jurisdiction "transportation systems, other than highways" for granting a person the exclusive right to maintain and operate buses in all or that part of the municipality designated in the agreement under such conditions as the municipality provides, including a condition that the municipality shall pay any deficit in operation incurred by the person.

Limitation on power

(2) The power of a municipality under subsection (1) is subject to the *Municipal Franchises Act*.

Deficit

(3) If an agreement under subsection (1) provides that a municipality shall pay a deficit incurred by a person in operating and maintaining buses, the municipality may levy a special rate on all the rateable property in the area designated in the agreement.

Airports

102. Despite section 23, a municipality may establish and operate an airport in any municipality or in unorganized territory.

Ferries

103. Despite section 23, a municipality may establish and operate a ferry system between any point within the municipality and any point outside the municipality, including outside Ontario.

Hamilton-Wentworth, passenger transportation systems

104. (1) Despite section 99, The Regional Municipality of Hamilton-Wentworth may by by-law provide that no person except the regional municipality has the power to operate a passenger transportation system within all or part of the regional municipality designated in the by-law and no lower-tier municipality has the power to pass a by-law under section 99.

Exception with approval

(2) If the regional municipality has passed a by-law under subsection (1), it may, subject to the *Municipal Franchises Act*, give approval to any person to operate a passenger transportation system within all or part of the designated area on such conditions as the regional municipality provides.

Deemed by-law

(3) On the day this section comes into force, the regional municipality shall be deemed to have passed a by-law under subsection (1) providing that no person shall operate a passenger transportation system within the Urban Transit Service Area established under section 42 of the *Regional Municipality of Hamilton-Wentworth Act* as it read on the day before this section came into force.

Exceptions

(4) A by-law under subsection (1) does not apply to the following passenger transportation systems:

1. Vehicles and marine vessels used for sightseeing tours.
2. Buses used to transport pupils, including buses owned and operated by, or operated under a contract with a school board, private school or charitable organization.
3. Buses owned and operated by a corporation or organization solely for its own purposes without compensation for transportation.
4. Cabs.
5. Railway companies incorporated under federal or provincial statutes.
6. Ferries.
7. Aviation systems.

Outside regional boundaries

(5) The regional municipality may, despite section 23 and subject to the *Public Vehicles Act*, establish, operate and maintain a passenger transportation system between any point in the municipality and any point outside the municipality, including outside Ontario.

Rights unaffected

(6) Nothing in this section prevents a person from operating a passenger transportation system that is used to convey personal property and passengers through an area designated by the regional municipality under subsection (1), from a point within the designated area to a point outside the designated area or from a point outside the designated area to a point inside the designated area.

Same

(7) Nothing in this section affects any rights existing on January 1, 1977 of any licensed public transportation operator.

Regional transit area

(8) The regional municipality may define a regional transit area within which a passenger transportation system will be provided and that regional transit area shall be deemed to be an urban municipality for the purposes of the *Public Vehicles Act*.

Deemed regional transit area

(9) On the day this section comes into force, the regional municipality shall be deemed to have passed a by-law under subsection (8) defining the Urban Transit Service Area established under section 42 of the *Regional Municipality of Hamilton-Wentworth Act* as it read on the day before this section came into force as the regional transit area.

Powers

(10) The regional municipality,

- (a) may hold and vote on the shares of The Hamilton Street Railway Company and its subsidiary company, Safety Service and Adjusters Limited;
- (b) shall be responsible for the general management, regulation and control of the company and the subsidiary company; and
- (c) shall appoint boards of directors for the company and the subsidiary company.

Alteration of board

(11) The regional municipality may alter the size and composition of a board of directors appointed under clause (10)(c).

Term

(12) The term of the directors appointed under clause (10)(c) shall be concurrent with the term of office of the appointing regional council, but the directors shall remain in office until the new directors are appointed.

Auditor

(13) The auditor of the regional municipality shall be the auditor of The Hamilton Street Railway Company and its subsidiary company.

Exemption

(14) The *Municipal Franchises Act* does not apply to the passenger transportation system operated by the regional municipality within its boundaries.

Amendment or repeal

(15) Nothing in this section prevents the regional municipality from amending or repealing a deemed by-law under subsection (3) or (9).

Ottawa-Carleton, passenger transportation systems

105. (1) Despite section 99, The Regional Municipality of Ottawa-Carleton may by by-law provide that no person except the regional municipality has the power to operate a passenger transportation system within all or part of the regional municipality designated in the by-law and no lower-tier municipality has the power to pass a by-law under section 99.

Exception with approval

(2) If the regional municipality has passed a by-law under subsection (1), it may, subject to the *Municipal Franchises Act*, give approval to any person to operate a passenger transportation system within all or part of the designated area on such conditions as the regional municipality provides.

Deemed by-law

(3) On the day this section comes into force, the regional municipality shall be deemed to have passed a by-law under subsection (1) providing that no person shall operate a passenger transportation system within the regional municipality.

Exceptions

(4) A by-law under subsection (1) does not apply to the following passenger transportation systems:

1. Buses used to transport pupils, including buses owned and operated by, or operated under a contract with a school board, private school or charitable organization.
2. Buses owned and operated by a corporation or organization solely for its own purposes without compensation for transportation.

3. Cabs:

4. Railway companies incorporated under federal or provincial acts.
5. Ferries.
6. Aviation systems.

Outside regional boundaries

(5) The regional municipality may, despite section 23 and subject to the *Public Vehicles Act*, establish, operate and maintain a passenger transportation system between any point in the municipality and any point outside the municipality, including outside Ontario.

Rights unaffected

(6) Nothing in this section prevents a person from operating a passenger transportation system that is used to convey personal property and passengers through the regional municipality, from a point within the regional municipality to a point outside the municipality or from a point outside the regional municipality to a point inside the municipality.

Non-application

(7) Subsection (1) does not apply in respect of the right of any person to operate a passenger transportation system within the area designated by the regional municipality under subsection (1) in accordance with a valid operating licence issued to that person under the *Public Vehicles Act* on or before January 1, 1972.

Regional transit area

(8) The regional municipality may define a regional transit area within which a passenger transportation system will be provided and that regional transit area shall be deemed to be an urban municipality for the purposes of the *Public Vehicles Act*.

Deemed regional transit area

(9) On the day this section comes into force, the regional municipality shall be deemed to have passed a by-law under subsection (8) defining the regional municipality as the regional transit area.

Transit commission

(10) The Ottawa-Carleton Regional Transit Commission is continued under the name Ottawa-Carleton Regional Transit Commission in English and Commission de transport régionale d'Ottawa-Carleton in French.

Body corporate

(11) The commission is a body corporate and has the same composition and quorum requirements as it had on the day before this section came into force.

Delegation

(12) The regional municipality may delegate the power to operate a passenger transportation system within all or any part of the regional municipality to the commission.

Deemed delegation

(13) On the day this section comes into force, the regional municipality shall be deemed to have delegated to the commission the power to operate a passenger transportation system within the area in which the commission is operating a system on the day before this section came into force.

Property

(14) The commission may purchase, lease or otherwise acquire any real or personal property for its purposes and may lease, sell or otherwise dispose of that property.

Condition

(15) The commission may not purchase or sell real property without the prior approval of the regional municipality.

Assets

(16) The commission may, and on request shall, release to the regional municipality all its interest in assets which it no longer requires for the operation of the passenger transportation system.

Powers

- (17) With the permission of the regional municipality the commission may,
- (a) transport passengers between any point in the regional municipality and any point outside the municipality, including outside Ontario.
 - (b) enter into agreements with municipalities and passenger transport operators in Quebec in respect of connecting or reciprocal passenger transportation systems and the shared or sole use of facilities, personnel or equipment;
 - (c) enter into agreements with adjoining and lower-tier municipalities in respect of the operation of a passenger transportation system in those municipalities; and
 - (d) arrange for temporary borrowing in the amount and subject to such conditions as are set out in the by-law.

Exemption from payments in lieu

(18) Neither the regional municipality nor the commission are liable for payments under section 27 of the *Assessment Act* with respect to land owned by the regional municipality or commission and used for purposes of a passenger transportation system, including car yards or shops used in connection with the system.

Concessions excepted

(19) Subsection (18) does not apply to concessions operated, rented or leased in passenger transportation stations.

By-laws respecting debts

(20) The regional municipality may pass by-laws requiring the commission to pay to the regional municipality the amounts required to be raised annually by the regional municipality to meet interest, principal and sinking fund instalments on debentures or other debts incurred by the regional municipality for public transportation purposes, upon such terms as to time, manner of payment and interest as are set out in the by-law.

Urban municipality

(21) All passenger transportation provided by the commission within the regional municipality shall be deemed to be within an urban municipality for the purpose of the *Public Vehicles Act*.

Non-application

(22) The *Municipal Franchises Act* does not apply to the passenger transportation system operated by the regional municipality or the commission.

Amendment or repeal

(23) Nothing in the section prevents the regional municipality from amending or repealing a deemed by-law under subsection (3), (9) or (13).

London

106. Nothing in subsection 3(1) of the *City of London Act, 1960-61* or in subsection 99 (1) affects the right of any person to operate a bus transportation system within the City of London in accordance with a valid operating licence issued to that person under the *Public Vehicles Act* on or before December 31, 1992.

NATURAL ENVIRONMENT

Restrictions on site alteration by-laws

107. A municipality does not have the power under section 11 to prohibit or regulate with respect to the placing or dumping of fill or alteration of the grade of land by any municipality, conservation authority, local board, school board or Ontario Hydro.

Restrictions on tree by-laws

108. A municipality does not have the power under section 11 or 110 to prohibit or regulate with respect to the injuring or destruction of trees by any municipality, conservation authority, local board, school board, Ontario Hydro or any person holding a licence under the *Crown Forest Sustainability Act, 1994*.

Fines, injuring trees

109. (1) A municipality may, in a by-law prohibiting or regulating with respect to the injuring or destruction of trees, provide that any person who contravenes the by-law is guilty of an offence and on conviction is liable,

- (a) on a first conviction, to a fine of not more than \$10,000; and

- (b) on any subsequent conviction, to a fine of not more than \$20,000.

Replacement

(2) If a person is convicted of an offence under a by-law prohibiting or regulating with respect to the injuring or destruction of trees, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may order the person to replant or have replanted the trees in such manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

By-laws respecting trees

110. (1) A local municipality, having a population according to the last enumeration taken under section 15 of the *Assessment Act* that exceeds 10,000, may pass by-laws,

- (a) prohibiting or regulating the injuring or destruction of trees or any class of trees in any defined area or on any class of land;
- (b) requiring that a permit be obtained for the injuring or destruction of trees specified in the by-law and prescribing fees for the permit; and
- (c) prescribing circumstances under which a permit may be issued.

Conditions

(2) The municipality may impose such conditions on a permit as in the opinion of council are reasonable.

Delegation

(3) The municipality may by by-law delegate the authority to issue permits, on such conditions as the by-law may provide, to an appointed officer, including the power to impose conditions on permits.

Appeal

(4) An applicant for a permit under a by-law passed under subsection (1) may appeal to the Ontario Municipal Board,

- (a) if the municipality refuses to issue a permit, within 30 days after the refusal;
- (b) if the municipality fails to make a decision on an application, within 45 days after the application is received by the clerk; or
- (c) if the applicant objects to a condition in the permit, within 30 days after the issuance of the permit.

Decision

(5) The Ontario Municipal Board may make any decision that the municipality

could have made.

Officers

(6) The municipality may by by-law designate one or more persons as officers for the purposes of this section and assign to them the responsibility for enforcing the by-law.

Training

(7) The municipality shall ensure that each officer is properly trained to perform his or her duties and, if the officer is not an employee of the municipality, is supervised by an employee of the municipality.

Power of entry

(8) If a by-law under this section is in effect, an officer may during daylight hours enter and inspect any land to which the by-law applies.

Limitation

(9) Subsection (8) does not allow an officer to enter any building.

Order

(10) If an officer is satisfied that a contravention of a by-law passed under subsection (1) has occurred, the officer may make an order requiring the person to stop the injuring or destruction of trees and the order shall contain particulars of the contravention.

Appeal

(11) A person to whom an order under subsection (10) has been directed may appeal the order to the municipality by filing a notice of appeal with the clerk of the municipality within 30 days after the date of the order.

Hearing

(12) As soon as practicable after a notice of appeal is filed, the municipality shall hear the appeal and may confirm, alter or revoke the order.

Decision final

(13) The decision of the municipality under subsection (12) is final.

Non-application

(14) A by-law passed under this section does not apply to,

- (a) activities or matters undertaken by a municipality, conservation authority, local board, school board or Ontario Hydro;
- (b) activities or matters authorized by a licence under the *Crown Forest Sustainability Act, 1994*; or
- (c) activities or matters prescribed by regulation.

Conflicts

(15) Despite section 15, if there is a conflict between a by-law passed under subsection (1) and a by-law passed under the *Trees Act*, the provision that is most restrictive of the injuring or destruction of trees prevails.

Offence

(16) A by-law passed under subsection (1) may provide that any person who contravenes the by-law or an order under subsection (10) is guilty of an offence and on conviction is liable,

- (a) on a first conviction, to a fine of not more than \$10,000; and
- (b) on any subsequent conviction, to a fine of not more than \$20,000.

Further order

(17) If a person is convicted of an offence under a by-law passed under subsection (1), the court in which the conviction has been entered and any court of competent jurisdiction thereafter,

- (a) may make an order prohibiting the continuation or repetition of the offence by any person; and
- (b) may order the person to replant trees in such manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to reestablish to trees.

Agreement

(18) An upper-tier municipality may enter into an agreement with any of its lower-tier municipalities for the designation by the upper-tier municipality of one or more officers for the administration of by-laws passed under subsection (1) by the lower-tier municipalities and for charging those municipalities the whole or part of the costs of the officers.

Regulations

(19) The Lieutenant Governor in Council may make regulations prescribing activities or matters to which by-laws under this section do not apply.

CULTURE, PARKS, RECREATION AND HERITAGE

Acquisition of land

111. Despite section 23, a municipality may acquire and use land in another municipality or in unorganized territory for any purpose within its "culture, parks, recreation and heritage" sphere of jurisdiction.

Agreement, conservation authority

112. (1) The regional municipalities of Durham, Halton, Hamilton-Wentworth, Ottawa-Carleton, Peel, Sudbury and York may enter into an agreement with a

conservation authority to manage and control land vested in the conservation authority.

Powers

(2) An upper-tier municipality which has entered into an agreement under subsection (1) may,

- (a) exercise any of its powers in respect of culture, parks, recreation or heritage matters on the land;
- (b) lay out, construct and maintain roads on the land;
- (c) with the consent of the local municipality in which any part of the land is located, assume the maintenance of all or part of the existing roads;
- (d) prescribe the rate of speed for motor vehicles driven on those roads in accordance with subsection 128 (4) of the *Highway Traffic Act*.

Dissolution

113. (1) All boards of park management established under the *Public Parks Act* are dissolved on the date that Act is repealed.

Assets, liabilities

(2) All the assets and liabilities of a board of park management become assets and liabilities of the municipality within which the board exercised jurisdiction on the date of repeal.

By-laws continued

(3) Every by-law of a board of park management that is in force immediately before the repeal of the Act,

- (a) shall be deemed to be a by-law of the municipality within which the board exercised jurisdiction; and
- (b) remains in force until the council of that municipality repeals it or amends it.

Limitation

(4) Nothing in this section authorizes the repeal or amendment of a by-law conferring rights, privileges, franchises, immunities or exemptions that a board of park management could not have lawfully repealed or amended.

BUSINESS IMPROVEMENT AREAS

Designation of improvement area

114. (1) A local municipality may designate an area as an improvement area and may establish a board of management,

- (a) to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and
- (b) to promote the area as a business or shopping area.

Corporation

(2) The board of management is a corporation consisting of the number of directors established by the municipality.

Composition

(3) The board of management shall be composed of,

- (a) one or more directors appointed directly by the municipality; and
- (b) the remaining directors selected by a vote of the membership of the improvement area at a meeting called for that purpose and appointed by the municipality.

Membership

(4) Members of an improvement area consist of persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property who are required to pay all or part of the taxes on the property under their lease.

One vote

(5) Each member of an improvement area has one vote regardless of the number of properties that the member may own or lease in the improvement area.

Refusal to appoint

(6) The municipality may refuse to appoint a person selected by the members of an improvement area, in which case the municipality may leave the position vacant or direct that a meeting of the members of the improvement area be held to elect another candidate for the municipality's consideration.

Term

(7) The term of the directors of the board of management is the same as the term of the council that appointed them but continues until their successors are appointed.

Reappointment

(8) Directors are eligible for reappointment.

Vacancies

(9) Subject to subsection (6), if a vacancy occurs for any cause, the municipality shall appoint a person to fill the vacancy from among the members of the improvement area for the unexpired portion of the term.

Budget

115. (1) A board of management shall submit a proposed budget for the current year for the approval of the members of the improvement area.

Council to approve

(2) The board of management shall submit the approved budget to council by the date and in the form required by the municipality and the municipality may approve it in whole or in part but may not add expenditures to it.

Limitation, spending

(3) The board of management shall not spend any money unless it is included in the budget approved by the municipality or in a reserve fund established under section 370.

Limitation, debts

(4) The board of management shall not incur any indebtedness extending beyond the current year without the prior approval of the municipality.

Prohibition

(5) The board of management shall not borrow money.

Limitations on power

(6) Section 65 of the *Ontario Municipal Board Act* and section 354 of this Act apply to the municipality's approval under subsection (4) in the same manner as if it were incurring a debt of the municipality.

Notice

116. The board of management shall give reasonable notice to the general membership of the improvement area of a meeting to hold a vote under clause 114 (3) (b) or subsection 115 (1).

Annual report

117. (1) A board of management shall submit its annual report for the preceding year to council by the date and in the form required by the municipality and the report shall include an audited and certified financial statement with balance sheet and revenue and expenditure statement.

Auditor

(2) The municipal auditor is the auditor of each board of management and may inspect all documents, accounts and minutes of the board.

Special charge

118. (1) The municipality shall annually levy a special charge upon rateable property in the improvement area that is in a prescribed business property class to raise the amount required for the purposes of the board of management, including interest required to repay any interest payable by the municipality on that amount.

Special benefit

(2) Despite subsection (1), the municipality may annually levy the amount as a special benefit charge upon the rateable property in the improvement area that is in a prescribed business property class and that, in council's opinion, derives special benefit from the improvement area apportioned equitably in accordance with the benefits that, in council's opinion, accrue to the properties from the activities related to the improvement area.

Minimum and maximum charges

(3) The municipality may establish minimum and maximum charges, expressed as fixed percentages of the assessed value of rateable property, that may be levied under this section and, when such a by-law is in force, the charges levied shall not be less than or greater than such minimum and maximum charges, respectively.

Borrowings

(4) If only a part of money borrowed by the municipality in any year for the purposes of a board of management is required to be repaid in that year or a subsequent year, only that part and any interest payable on the total amount shall be included in the levies under this section in that year or subsequent year, respectively.

Deemed taxes

(5) A charge levied under this section shall be deemed to be taxes on property and section 308 applies to that charge.

Changes to boundary

119. The municipality may alter the boundaries of an improvement area and the board of management for that improvement area is continued as the board of management for the altered area.

Notice

120. (1) Before passing a by-law under subsection 114 (1), subsection 118 (2) or (3) or section 119, notice of the proposed by-law shall be sent by prepaid mail to the board of management of the improvement area, if any, and to every person who, on the last returned assessment roll, is assessed for rateable property that is in a prescribed business property class which is located,

- (a) where the improvement area already exists, in the improvement area and in any geographic area the proposed by-law would add to the improvement area; and
- (b) where a new improvement area would be created by the proposed by-law, in the proposed improvement area.

When notice received

(2) A person who receives a notice under this section shall, within 14 days after the notice is mailed,

- (a) give a copy of the notice to each tenant of the property to which the

notice relates who is required to pay all or part of the taxes on the property; and

- (b) give the clerk of the municipality a list of every tenant described in clause (a) and the share of the taxes that each tenant is required to pay.

Objections

(3) A municipality shall not pass a by-law referred to in subsection (1) if,

- (a) written objections are received by the clerk of the municipality within 60 days after the last day of mailing of the notices;
- (b) the objections have been signed by at least one-third of the persons entitled to notice under subsection (1); and
- (c) the objectors are responsible for at least one-third of the taxes on rateable property in the area that is in a prescribed business property class levied for the purposes of the general local municipality levy.

Withdrawal of objections

(4) If sufficient objections are withdrawn in writing within the 60 day period referred to in clause (3) (a) so that the conditions set out in clauses (3) (b) and (c) no longer apply, the municipality may pass the by-law.

Determination by clerk

(5) The clerk shall determine whether the conditions set out in subsection (3) have been met and, if they are, shall issue a certificate affirming that fact.

Determination final

(6) The determination by the clerk is final.

Repeal of by-law

~~121.~~ 121. (1) Council shall give notice in accordance with subsection 120 (1) of a proposed by-law to repeal a by-law under subsection 114 (1) if the municipality has received,

- (a) a resolution from the board of management requesting the repeal; or
- (b) a request for the repeal signed by at least 25 per cent of the persons who are entitled to notice under subsection 120 (1) and who are responsible for at least 25 per cent of the taxes on rateable property in the area that is in a prescribed business property class levied for the purposes of the general local municipality levy.

Time

(2) Council shall give the notice within 30 days after receiving the resolution or request.

When notice received

(3) Subsection 120 (2) applies to the notice.

Repeal

(4) Council shall repeal the by-law under subsection 114 (1) if requests for the repeal are received by the clerk of the municipality within 60 days after the last day of mailing of the notices and,

- (a) the requests have been signed by at least one-half of the persons entitled to notice under subsection (1) or (3); and
- (b) those who have signed the requests are responsible for at least 50 per cent of the taxes on rateable property in the area that is in a prescribed business property class levied for the purposes of the general local municipality levy.

Requests withdrawn

(5) If sufficient requests are withdrawn in writing within the 60 day period referred to in subsection (4) so that the conditions set out in that subsection no longer apply, the municipality is not required to repeal the by-law.

Determination by clerk

(6) The clerk shall determine whether the conditions set out in clause (1) (b) and subsection (4) have been met and, if so, shall issue a certificate affirming that fact.

Determination final

(7) The determination by the clerk is final.

Restriction

(8) If the conditions of subsection (4) are not satisfied, council is not required to give notice under subsection (1) in response to a resolution or request for a period of two years after the last mailing of the notices.

Municipality may repeal by-law

(9) Nothing in this section prevents a municipality from repealing a by-law under subsection 114 (1) on its own initiative.

Tenants

122. For the purposes of clauses 120 (3) (c), 121 (1) (b) and 121 (4) (b), a tenant shall be deemed to be responsible for the part of the taxes that the tenant is required to pay under the tenant's lease.

Dissolution of board

123. (1) Upon the repeal of a by-law under subsection 114 (1), the board of

management is dissolved and the assets and liabilities of the board are vested in and become the assets and liabilities of the municipality.

Liabilities exceed assets

(2) If the liabilities assumed under subsection (1) exceed the assets assumed, the council may recover the difference by imposing a charge on all rateable property in the former improvement area that is in a prescribed business property class levied for the purposes of the general local municipality levy.

Regulations

124. The Minister may make regulations prescribing one or more classes of real property prescribed under the *Assessment Act* as business property classes for the purposes of sections 114 to 123.

ECONOMIC DEVELOPMENT

Assistance prohibited

125. (1) Despite any Act, a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose.

Same

(2) Without limiting subsection (1), the municipality shall not grant assistance by,

- (a) giving or lending any property of the municipality, including money;
- (b) guaranteeing borrowing;
- (c) leasing or selling any property of the municipality at below fair market value; or
- (d) giving a total or partial exemption from any levy, charge or fee.

Exception

(3) Subsection (1) does not apply to a council exercising its authority under subsection 28 (6) or (7) of the *Planning Act*.

General power to make grants

126. (1) Despite any provision of this or any other Act relating to the giving of grants or aid by a municipality, subject to section 8, a municipality may make grants, on such terms as to security and otherwise as the council considers appropriate, to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality.

Loans, guarantees, etc.

(2) The power to make a grant includes the power,

- (a) to guarantee a loan and to make a grant by way of loan and to charge interest on the loan;
- (b) to sell or lease land for nominal consideration or to make a grant of land;
- (c) to provide for the use by any person of land owned or occupied by the municipality upon such terms as may be fixed by council;
- (d) to sell, lease or otherwise dispose of at a nominal price, or make a grant of, any personal property of the municipality or to provide for the use of the personal property on such terms as may be fixed by council; and
- (e) to make donations of foodstuffs and merchandise purchased by the municipality for that purpose.

Small business counselling

127. (1) Despite section 125, a municipality may provide for the establishment of a counselling service to small businesses operating or proposing to operate in the municipality.

Small business programs

(2) To encourage the establishment and initial growth of small businesses or any class of them in the municipality, a municipality may,

- (a) with the approval of the Lieutenant Governor in Council, establish and maintain programs for that purpose; and
- (b) participate in programs administered by the Ministry of Economic Development, Trade and Tourism.

Permitted actions

(3) For the purposes of a program referred to in subsection (2) and subject to the regulations, a municipality may,

- (a) acquire land and erect and improve buildings and structures in order to provide leased premises for eligible small businesses or for a corporation described in clause (d);
- (b) despite section 125, make grants to corporations described in clause (d);
- (c) lease land to small businesses included in a program;

- (d) enter into leases of land and other agreements related to the program with a corporation without share capital established for the purposes of encouraging the establishment and initial growth of small businesses or any class of them in the municipality;
- (e) sell, lease or otherwise dispose of any personal property of the municipality to an eligible small business or to a corporation described in clause (d) or provide for the use of such property by the small business or corporation;
- (f) provide for the use of the services of any municipal employee by an eligible small business or by a corporation described in clause (d);
- (g) establish a local board to administer a program or to administer the municipality's participation in a program referred to in subsection (2);
- (h) appoint one or more of the directors of a corporation described in clause (d); and
- (i) apply, under the *Corporations Act*, to incorporate a corporation described in clause (d) having such objects and powers as may be approved by the Minister.

Grant includes loans

(4) The power to make grants under clause (3) (b) includes the power to make loans, to charge interest on the loans and to guarantee loans.

Same

(5) A corporation described in clause (3) (d) that leases any building or structure from a municipality shall use it for the purpose of providing leased premises to small businesses included in a program referred to in subsection (2).

Availability of assistance

(6) Despite section 125, a lease of land, the sale, lease or other disposition of personal property or the use of personal property or personal services under subsection (3) may be made or provided at less than fair market value.

Limitation

(7) Subsection (6) ceases to apply to an eligible small business on the third anniversary of the day it first occupied premises leased to it under this section.

Local board

(8) The following apply to a local board established under clause (3) (g):

1. The local board is a corporation consisting of such number of members as the municipality may determine.

2. Only a person qualified to be elected as a member of the council of the municipality is eligible to be a member of the local board.
3. Members shall hold office until the expiration of the term of the council that appointed them and until their successors are appointed and are eligible for reappointment.
4. The powers conferred and the duties imposed on the municipality by subsections (1) and (2), clauses (3) (a) to (f) and the regulations shall be exercised by the local board subject to any limitations set out in the by-law.
5. The local board shall submit to the municipality its budget for the current year at the time and in the form determined by council and request from council all of the money required to carry out its powers and duties.
6. On or before the March 1 in each year, the local board shall submit its annual report for the preceding year to the municipality including an audited and certified financial statement of its affairs, with balance sheet and revenue and expenditure statement.
7. The municipal auditor shall be the auditor of the local board and all books, documents, transactions, minutes and accounts of the local board shall, at all times, be open to the auditor's inspection.
8. The power of council to raise money by the issue of debentures or otherwise for the acquisition of land or construction of buildings shall not be transferred to the local board.
9. Upon the repeal of the by-law establishing the local board, the local board ceases to exist and its documents, assets and liabilities shall be assumed by the municipality.

Authority unaffected

(9) Nothing in paragraph 5 of subsection (8) affects the authority of the municipality to provide money for the purposes of the local board and when money is provided, the municipal treasurer shall, upon the certificate of the local board, pay out the money.

Regulations

(10) The Lieutenant Governor in Council may make regulations,

- (a) prescribing maximum amounts that may be spent by municipalities or any particular municipality under a program referred to in subsection (2);
- (b) defining "small business" for the purposes of this section.

Interpretation

(11) A business is an eligible small business if it is included in a program referred to in subsection (2) and it is in occupation of premises leased to it under this section.

Community development corporations

128. (1) The council of a municipality, either alone or with one or more persons or municipalities, may incorporate a corporation under Part III of the *Corporations Act* as a community development corporation.

Objects

- (2) The community development corporation must be incorporated,
- (a) with the sole objects of promoting community economic development with the participation of the community by facilitating and supporting community strategic planning and increasing self-reliance, investment and job creation within the community; or
 - (b) with objects substantially similar to those described in clause (a).

Appointment of person to incorporate

(3) A municipality shall appoint one or more persons to apply on the municipality's behalf for incorporation under subsection (1).

Assistance

(4) Despite section 125, a municipality may, except as may be restricted or prohibited by regulation, provide financial or other assistance at less than fair market value or at no cost to a community development corporation, and such assistance may include,

- (a) giving or lending money and charging interest;
- (b) lending or leasing land;
- (c) giving, lending or leasing personal property; and
- (d) providing the services of municipal employees.

Prohibited assistance

(5) A municipality may not use the power under this section to directly or indirectly obtain, guarantee or purchase an interest in,

- (a) an asset or liability, including a contingent liability, of a community development corporation;
- (b) a security acquired by a community development corporation; or

- (c) a guarantee of a community development corporation.

Reports and audits

(6) If a municipality has assisted a community development corporation in a manner permitted by subsection (4) or has nominated a person who has become a director of a community development corporation, the board of directors of the community development corporation shall,

- (a) make an annual financial report, and additional financial reports as requested, to the municipality at the time, in the manner and with the information specified by the municipality; and
- (b) upon the request of the municipality, permit the municipal auditor to conduct an audit of the corporation, including an examination of the corporation's assets.

Powers on audit

(7) In conducting an audit, the municipal auditor may inspect all records, transactions, vouchers, minutes and accounts of the community development corporation.

Local board

(8) If a municipality has appointed first directors or incorporators or nominated a person who has become a director of a community development corporation, the corporation is considered a local board for the purposes of the *Municipal Conflict of Interest Act*.

Deemed local board

(9) The Minister may by regulation deem community development corporations to be local boards for the purposes of specified provisions of this Act and the *Municipal Affairs Act*, and may prescribe the extent and manner of application of those provisions to corporations deemed as local boards.

Designation

(10) Community development corporations that receive municipal assistance in a manner permitted by subsection (4) or that have one or more directors nominated by the council of a municipality may be designated under the *Municipal Freedom of Information and Protection of Privacy Act* as a class of institution to which that Act applies.

Regulations

(11) The Minister may make regulations prohibiting or restricting the kind, manner and extent of assistance under subsection (4) that may be provided by a municipality to a community development corporation.

Same

(12) A regulation under subsection (11) may be general or particular in its application.

Agreements for municipal capital facilities

129. (1) A municipality may enter into agreements for the provision of municipal capital facilities by any person, including another municipality.

Contents of agreements

(2) An agreement may allow for the lease, operation or maintenance of the facilities and for the sale or other disposition of municipal land or buildings.

Assistance by municipality

(3) Despite section 125, a municipality may provide financial or other assistance at less than fair market value or at no cost to any person who has entered into an agreement to provide facilities under this section and such assistance may include,

- (a) giving or lending money and charging interest;
- (b) giving, lending, leasing or selling property;
- (c) guaranteeing borrowing; and
- (d) providing the services of employees of the municipality.

Restriction

(4) The assistance shall only be in respect of the provision, lease, operation or maintenance of the facilities that are the subject of the agreement.

Notice of agreement by-law

(5) Upon the passing of a by-law permitting a municipality to enter into an agreement under this section, the clerk of the municipality shall give written notice of the by-law to the Minister of Education and Training.

Tax exemption

(6) Despite any Act, the council of a municipality may exempt from taxation for municipal and school purposes land or a portion of it on which municipal capital facilities are or will be located that,

- (a) is the subject of an agreement under subsection (1);
- (b) is owned or leased by a person who has entered an agreement to provide facilities under subsection (1); and
- (c) is entirely occupied and used or intended for use for a service or function that may be provided by a municipality.

Development charges exemption

(7) Despite the *Development Charges Act*, a by-law passed under subsection (6) may provide for a full or partial exemption for the facilities from the payment of development charges imposed by the municipality under that Act.

Notice of tax exemption by-law

(8) Upon the passing of a by-law under subsection (6), the clerk of the municipality shall give written notice of the contents of the by-law to,

- (a) the assessment commissioner;
- (b) the clerk of any other municipality that would, but for the by-law, have had authority to levy rates on the assessment for the land exempted by the by-law; and
- (c) the secretary of any school board that would, but for the by-law, have had authority to require a municipality to levy rates on the assessment for the land exempted by the by-law.

Reserve fund

(9) The council of a municipality may establish a reserve fund to be used for the exclusive purpose of renovating, repairing or maintaining facilities that are provided under an agreement under this section.

Same

(10) An agreement under this section may provide for contributions to the reserve fund by any person.

Tax exemption by school board

(11) Despite any Act, a school board that is authorized to enter into agreements for the provision of school capital facilities by any person may, by resolution, exempt from taxation for municipal and school purposes land or a portion of it on which the school capital facilities are or will be located that,

- (a) is the subject of the agreement;
- (b) is owned or leased by a person who has entered an agreement to provide school capital facilities; and
- (c) is entirely occupied and used or intended for use for a service or function that may be provided by a school board.

Development charges exemption

(12) Despite the *Development Charges Act*, a resolution passed under subsection (11) may provide for a full or partial exemption for the facilities from the payment of education development charges imposed by the school board under that Act.

Notice of tax exemption by school board

(13) Upon the passing of a resolution under subsection (11), the secretary of the school board shall give written notice of the contents of the resolution to,

- (a) the assessment commissioner;

- (b) the clerk and the treasurer of any municipality that would, but for the resolution, have had authority to levy rates on the assessment for the land exempted by the resolution; and
- (c) the secretary of any other school board that would, but for the resolution, have had authority to require a municipality to levy rates on the assessment for the land exempted by the resolution.

Restriction on tax exemption

(14) The tax exemption under subsection (6) or (11) shall not be in respect of area-rated taxes for sewer and water.

Effective date of tax exemption by-law, resolution

(15) A by-law passed under subsection (6) or resolution passed under subsection (11) shall specify an effective date which shall be the date of passing of the by-law or resolution or a later date.

Tax refund, etc.

(16) Section 316 applies with necessary modifications to allow for a cancellation, reduction or refund of taxes that are no longer payable as a result of a by-law or resolution passed under this section.

Taxes struck from roll

(17) Until the assessment roll has been revised, the treasurer of the local municipality shall strike taxes from the tax roll that are exempted by reason of a by-law or resolution passed under this section.

Deemed exemption

(18) The tax exemption under subsection (6) or (11) shall be deemed to be an exemption under section 3 of the *Assessment Act*, but shall not affect a payment required under section 27 of that Act.

Regulations

(19) The Lieutenant Governor in Council may make regulations,

- (a) defining municipal capital facilities for the purposes of this section;
- (b) prescribing eligible municipal capital facilities or classes of them that may and may not be the subject of agreements under subsection (1);
- (c) prescribing eligible municipal capital facilities or classes of them for which municipalities may and may not grant tax exemptions under subsection (6);
- (d) prescribing rules, procedures, conditions and prohibitions for municipalities entering agreements under subsection (1);

- (e) defining and prescribing eligible school capital facilities or classes of them for which school boards may and may not grant tax exemptions under subsection (11).

Promotion of lower-tier municipality

130. (1) Despite section 11, a lower-tier municipality in the regional municipality of Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Oxford or Sudbury may pass by-laws respecting the promotion of the lower-tier municipality in relation to land it acquired or had entered into a binding agreement to acquire on or before the regional municipality came into existence.

Same

(2) Despite section 11, the regional municipalities of Durham, Halton and Oxford may authorize one or more of its lower-tier municipalities to pass by-laws respecting the promotion of the lower-tier municipality.

Specific lands

(3) Despite section 11, The Regional Municipality of Hamilton-Wentworth may authorize the City of Hamilton to pass by-laws respecting the promotion of all or part of those lands in the city described in subsection 136 (2a) of the *Regional Municipality of Hamilton-Wentworth Act, 1980*, as enacted by the Statutes of Ontario, 1986, chapter 46, section 4.

Conditions

(4) An authorization under this section may be given on such conditions as the regional municipality considers appropriate.

Industrial, commercial and institutional sites

131. (1) Despite section 11, a lower-tier municipality in the regional municipality of Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Ottawa-Carleton, Oxford, Peel or Sudbury may pass by-laws respecting industrial, commercial and institutional sites it acquired or had entered into a binding agreement to acquire on or before the day the regional municipality came into existence or in the case of Ottawa-Carleton, on or before May 2, 1994.

County of Oxford

(2) Despite section 11, the County of Oxford may authorize one or more of its lower-tier municipalities to pass by-laws respecting industrial, commercial and institutional sites.

Hamilton-Wentworth

(3) Despite section 11, The Regional Municipality of Hamilton-Wentworth may authorize the City of Hamilton to pass by-laws respecting industrial, commercial and institutional sites in all or part of those lands described in subsection 136 (2a) of the *Regional Municipality of Hamilton-Wentworth Act, 1980*, as enacted by the Statutes of Ontario, 1986, chapter 46, section 4.

Conditions

(4) An authorization under this section may be given on such conditions as the regional municipality considers appropriate.

NUISANCES

No approval required

132. Despite section 178 of the *Environmental Protection Act*, a by-law of a municipality with respect to noise and vibration passed under any sphere of jurisdiction may be passed without the approval of the Minister of Environment.

DRAINAGE AND FLOOD CONTROL

Docks in canal

133. If a municipality owns a water canal and authorizes persons to construct, maintain and use docks or slips in the canal, the municipality is not liable for damages occurring as a result of the construction, maintenance or use.

Agreement re: flood control

134. Despite the repeal of paragraph 15 of section 207 of the *Municipal Act*, being chapter M.45 of the Revised Statutes of Ontario, 1990, that paragraph continues to apply to land acquired by a municipality or land with respect to which a municipality has entered into a binding agreement to acquire before that paragraph was repealed.

STRUCTURES, INCLUDING FENCES AND SIGNS

Non-application of Act

135. (1) A local municipality may provide that the *Line Fences Act* does not apply to all or any part of the municipality.

Exclusion

(2) Despite a by-law passed under subsection (1), section 20 of the *Lines Fences Act* continues to apply throughout the municipality.

Advertising devices

136. The following rules apply to a by-law of a municipality respecting advertising devices, including signs:

1. Before passing the by-law, the municipality shall give public notice of its intention to pass the by-law.
2. The by-law cannot prohibit or regulate the message or content of what appears on advertising devices except on advertising devices for adult entertainment businesses.

3. The by-law may authorize the municipality to enter land and pull down or remove an advertising device, at the expense of the owner of the advertising device, if it is erected or displayed in contravention of the by-law.
4. The by-law does not apply to an advertising device that was lawfully erected or displayed on the day the by-law comes into force if the advertising device is not substantially altered, and the maintenance and repair of the advertising device or a change in the message or contents displayed shall be deemed not in itself to constitute a substantial alteration.
5. The municipality may authorize minor variances from the by-law if in the opinion of the municipality the general intent and purpose of the by-law are maintained.

PARKING, EXCEPT ON HIGHWAYS

Municipal parking lots

137. If a municipality passes a by-law for regulating or prohibiting with respect to the parking of vehicles in a parking lot owned or occupied by the municipality, it may provide for the removal or impounding, at the owner's expense, of any vehicle parked or left contrary to the by-law and subsection 170 (15) of the *Highway Traffic Act* applies with necessary modifications to the by-law.

Traffic on private parking lots

138. Subject to section 140, a municipality does not have the power to regulate or prohibit with respect to parking or traffic on parking lots not owned or occupied by the municipality unless,

- (a) the owner of the land has filed with the clerk of the municipality written consent to the application of the by-law to the parking lot; and
- (b) a sign is erected at each entrance to the parking lot clearly indicating the regulation.

Impounding vehicles parked on private land

139. (1) If a municipality passes a by-law for regulating or prohibiting with respect to the parking or leaving of a motor vehicle on private land without the consent of the owner, it may provide for the removal or impounding of any vehicle, at the vehicle owner's expense, parked or left contrary to the by-law and subsection 170 (15) of the *Highway Traffic Act* applies with necessary modifications to the by-law.

Impounding vehicles parked on municipal property

(2) If a municipality passes a by-law for regulating or prohibiting with respect to the parking or leaving of a motor vehicle on land owned or occupied by the

municipality or any local board of it without the consent of the municipality or local board, as the case may be, it may provide for the removal or impounding of any vehicle, at the vehicle owner's expense, parked or left contrary to the by-law and subsection 170 (15) of the *Highway Traffic Act* applies with necessary modifications to the by-law.

Signs

(3) If signs are erected on land stating conditions on which a motor vehicle may be parked or left on the land or regulating or prohibiting the parking or leaving of a motor vehicle on the land, a motor vehicle parked or left on the land contrary to the conditions or prohibition shall be deemed to have been parked or left without consent.

Enforcement

(4) If it is alleged in a proceeding that a by-law referred to in this section has been contravened, the oral or written evidence of a police officer, police cadet or municipal law enforcement officer is receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated in it in respect of,

- (a) the ownership or occupancy of the land;
- (b) the absence of the consent of the owner or occupant; and
- (c) whether any person is an occupant or is an owner.

No notice

(5) A document offered as evidence under subsection (4) shall be admitted without notice under the *Evidence Act*.

Training

(6) If a municipality appoints a person who is not an employee of the municipality as a municipal law enforcement officer under section 15 of the *Police Services Act* for enforcing a by-law referred to in this section, the municipality shall ensure that the person is properly trained to perform the duties arising out of the appointment and is properly supervised having regard to the nature of those duties.

Agreement

(7) If a municipality has entered into an agreement with another municipality for that other municipality to be responsible for the enforcement of the by-law, the other municipality is responsible for ensuring the person is properly trained and supervised under subsection (6).

Supervision

(8) The supervision required under subsections (6) and (7) shall be performed by an employee of the municipality or, with the consent of the appropriate police services board, by a member of a municipal police force having jurisdiction in the municipality which passed the by-law.

Disabled parking permits

140. If a municipality passes a by-law for requiring the owners or operators of

parking lots or other parking facilities to which the public has access, whether on payment of a fee or otherwise, to provide designated parking spaces for vehicles displaying a disabled parking permit, the municipality,

- (a) shall prescribe the conditions of use of the disabled parking permit and shall prohibit the improper use of the permit; and
- (b) may provide for the removal and impounding of any vehicle, at its owner's expense, parked or left contrary to the by-law.

Transition, municipal parking authorities

141. A parking authority established under paragraph 57 of section 207 of the *Municipal Act*, being chapter M.45 of the Revised Statutes of Ontario, 1990, before this section came into force continues, despite the repeal of that paragraph, until the by-law establishing the authority is repealed and paragraphs 56 and 57 of section 207, as they read on the day before this section came into force, continue to apply, with necessary modifications, with respect to a parking authority.

ANIMALS

Impounding animals

142. (1) If a municipality passes a by-law regulating or prohibiting with respect to the being at large or trespassing of animals, it may provide for,

- (a) the seizure and impounding of animals being at large or trespassing contrary to the by-law;
- (b) the sale of impounded animals,
 - (i) if they are not claimed within a reasonable time,
 - (ii) if the expenses of the municipality respecting the impounding of the animals are not paid, or
 - (iii) at such time and in such manner as is provided in the by-law; and
- (c) the establishment of procedures for the voluntary payment of penalties out of court where it is alleged that the by-law respecting animals being at large or trespassing has been contravened.

Fine recoverable

(2) If payment is not made in accordance with the procedures established under clause (1) (c), the fine is recoverable under the *Provincial Offences Act*.

NOTES ON SOURCES OF PART III PROVISIONS BUSINESS LICENSING

Proposed New Policies :

Section 143 (7) & (8)

Section 147 (2)

Other Provisions:

The other provisions of Part III are based on the following Acts:

Municipal Act, as amended by the Savings and Restructuring Act, 1996

Individual Regional Acts

PART III BUSINESS LICENSING

General licensing powers

143. (1) Subject to section 265 and to the *Theatres Act* and the *Retail Business Holidays Act*, a local municipality may license, regulate and govern any business wholly or partly carried on within the municipality even if the business is being carried on from a location outside the municipality.

Scope of power

(2) Businesses that may be licensed, regulated and governed under subsection (1) include,

- (a) trades and occupations;
- (b) exhibitions, concerts, festivals and other organized public amusements held for profit or otherwise;
- (c) the sale or hire of goods or services on an intermittent or one-time basis; and
- (d) the display of samples, patterns or specimens of goods for the purpose of sale or hire.

Exclusions

(3) Subsection (1) does not apply to,

- (a) a manufacturing or an industrial business, except to the extent that it sells its products or raw material by retail;
- (b) the sale of goods by wholesale;
- (c) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources;
- (d) a courier business wherein parcels and documents are conveyed in vehicles used for hire, other than buses and cabs;
- (e) a transportation business wherein property is conveyed in vehicles used for hire, other than buses, cabs and tow trucks;
- (f) the operation of a group home as defined in subsection 162 (1); or
- (g) the rental of a residential unit as defined in subsection 164 (1).

Vehicles for hire

(4) A municipality does not have the power to regulate or govern motor vehicles

used for hire for the conveyance of property, other than buses, cabs and tow trucks.

Sale of liquor

(5) A municipality does not have the power to impose conditions with respect to the sale or service of liquor, as defined in the *Liquor Licence Act*, as a requirement of obtaining, continuing to hold or renewing a license issued by the municipality.

Powers re: licences

(6) Without limiting subsection (1), the power to license, regulate and govern a business includes the power,

- (a) to prohibit the carrying on of or engaging in the business without a licence;
- (b) to refuse to grant a licence or to revoke or suspend a licence;
- (c) to fix the expiry date for a licence;
- (d) to define classes of businesses and to separately license, regulate and govern each class;
- (e) to impose conditions as a requirement of obtaining, continuing to hold or renewing a licence, including conditions,
 - (i) requiring the payment of licence fees,
 - (ii) restricting the hours of operation of the business,
 - (iii) allowing, at any reasonable time, the municipality to inspect the places and premises and the equipment, vehicles and other personal property used or kept for hire in the carrying on of the business;
 - (iv) prohibiting places or premises used for the business to be constructed or equipped so as to hinder the enforcement of the by-law;
- (f) to impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (g) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (h) to licence, regulate or govern the place or premises used for the business and the persons carrying it on or engaged in it;

- (i) to regulate or govern the equipment, vehicles and other personal property used or kept for hire in connection with the carrying on or engaging in the business; and
- (j) to exempt any business or person from all or any part of the by-law.

Licence fees

(7) The total amount of fees to be charged for licensing a class of business shall not exceed the costs of administering and enforcing the by-law or portion of the by-law of the municipality licensing that class of business.

Explanation

(8) A by-law licensing any class of business passed after the date this section comes into force shall include an explanation as to why the municipality is licensing that class of business.

Exercise of power

(9) The exercise of a power under clause (6) (b), (f) or (g) is in the discretion of council and council shall exercise its discretion,

- (a) upon such grounds as are set out in the by-law; or
- (b) upon the ground that the conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable grounds for belief that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity.

Exemption, transient traders

(10) Subsection (7) and section 265 do not apply to a by-law under this Part for licensing transient traders.

Limitation

(11) A municipality shall not refuse to grant a licence by reason only of the location of the business if the business was being carried on at that location at the time the by-law requiring the licence came into force.

Expiry of a by-law

(12) A by-law licensing a business under this Act expires five years after it comes into force or the day it is repealed, whichever occurs first.

Amendments

(13) Amendments to a by-law licensing a business do not affect the term of the by-law.

Adult entertainment establishments

144. (1) A by-law under section 143 that licenses, regulates and governs adult

entertainment establishments may,

- (a) despite subsection 143 (11), define the area of the municipality in which adult entertainment establishments may or may not operate and limit the number of licences granted in any defined area in which they are permitted;
- (b) regulate and prohibit the placement, construction, size, nature and character of signs, advertising, and advertising devices, including any printed matter, oral or other communication or thing used to promote adult entertainment establishments; and
- (c) prohibit any person carrying on or engaged in an adult entertainment establishment business for which a license is required from permitting any person under the age of 18 years to enter or remain in the adult entertainment establishment or any part of it.

Same

(2) Any premises or any part of them is an adult entertainment establishment if, in pursuance of a business, goods, entertainment or services are provided in the premises or part that are designed to appeal to erotic or sexual appetites or inclinations.

Other powers not affected

(3) Nothing in this section affects the power that may be exercised by a municipality under this or any other Act to license, regulate or govern any other business.

Evidence rule

(4) For the purpose of a prosecution or proceeding under a by-law licensing, regulating or governing adult entertainment establishments, the holding out to the public that the entertainment or services described in subsection (2) are provided in premises or any part of them is admissible in evidence as proof, in the absence of evidence to the contrary, that the premises or part of them is an adult entertainment establishment.

Licensing tow trucks, etc

145. A by-law under section 143 for licensing, regulating and governing owners and drivers of tow trucks and vehicles, other than motor vehicles, used for hire, may,

- (a) establish the rates or fares to be charged for the conveyance of property or passengers either wholly within the municipality or from any point in the municipality to any point outside the municipality; and
- (b) provide for the collection of the rates or fares charged for the conveyance.

Licensing cabs

146. (1) A by-law under section 143 for licensing, regulating and governing the owners and drivers of cabs may,

- (a) establish the rates or fares to be charged for the conveyance of property or passengers either wholly within the municipality or from any point in the municipality to any point outside the municipality;
- (b) provide for the collection of the rates or fares charged for the conveyance; and
- (c) limit the number of cabs or any class of them.

Airports

(2) A by-law under section 143 for licensing, regulating and governing the owners and drivers of cabs does not apply in respect of cabs conveying property or passengers from any point within the municipality to an airport situated outside the municipality if,

- (a) the airport is owned and operated by the Crown in right of Canada and the cab bears a valid and subsisting plate issued in respect of the airport under the Government Airport Concession Operations Regulations made under the *Department of Transport Act* (Canada); or
- (b) the airport is operated by a corporation or other body designated by the Governor in Council as a designated airport authority under the *Airport Transfer (Miscellaneous Matters) Act* (Canada) and the cab bears a valid and subsisting permit or licence issued by the designated airport authority.

Restriction

(3) A by-law licensing, governing and regulating the owners and drivers of cabs is void to the extent that it restricts, limits or prevents the owners and drivers of cabs from engaging in conveyances that meet the following criteria:

1. The purpose of the conveyance is to transport persons with physical, emotional or mental disabilities from any point in the municipality to any point outside the municipality.
2. The conveyance is made pursuant to a written contract for the use of a cab with respect to which a valid and subsisting licence has been issued under a by-law passed under this section by the municipality in which the conveyance begins or ends.

Mississauga

(4) No by-law passed by the City of Mississauga for licensing, regulating and governing the owners and drivers of cabs applies in respect of cabs, other than cabs licensed by the city, engaged in the conveyance of goods or passengers, if the conveyance commenced at the Lester B. Pearson International Airport.

Transient traders

147. (1) A by-law under section 143 licensing, regulating and governing transient traders shall not apply to,

- (a) the sale of stock of a bankrupt or an insolvent, within the meaning of any bankruptcy or insolvency Act in force in Ontario, which is being sold or disposed of within the municipality in which the business was being carried on at the time of the bankruptcy or insolvency so long as no goods, wares or merchandise are added to the stock;
- (b) the sale of any stock damaged by or as a result of a fire, which is being sold or disposed of within the municipality in which the business was being carried on at the time of the fire so long as no goods, wares or merchandise are added to the stock; and
- (c) the sale of a business to a purchaser who continues the business.

Definition

(2) In this Part,

"transient trader" means a person who offers goods, wares or merchandise for sale in any manner in the municipality,

- (a) other than on a permanent basis; or
- (b) on a permanent basis if the total time the person has operated the business on a permanent basis and the time the person continuously resided in the municipality immediately before beginning to operate the business on a permanent basis is less than three months.

Delegation

148. A municipality may delegate to the police services board the power to license, regulate and govern a business specified in the by-law for all or that part of the municipality over which the police services board has jurisdiction and, for that purpose, this Part applies with necessary modifications to the police services board.

Regulations

149. (1) The Minister may make regulations exempting any business or class of business from all or any part of a business licensing by-law of a municipality under any Act and imposing conditions and limitations on the powers of a municipality under

this Part.

Same

(2) A regulation under this section may,

- (a) be retroactive for a period not exceeding one year;
- (b) require a municipality to return licence fees collected during that period; and
- (c) require a municipality to use the licence fees in the prescribed manner.

Scope

(3) A regulation under this section may be general or specific in its application and may be restricted to those municipalities specified in the regulation.

Offence

150. (1) A by-law licensing, regulating and governing an adult entertainment establishment may provide that every person who contravenes the by-law, and every director or officer of a corporation who concurs in the contravention by the corporation, is guilty of an offence and on conviction is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year, or to both.

Same

(2) A licensing by-law under this Act, other than a by-law licensing an adult entertainment establishment, may provide that every person who contravenes the by-law, and every director or officer of a corporation who concurs in the contravention by the corporation, is guilty of an offence and on conviction is liable to a fine not exceeding \$25,000.

Corporation, maximum penalty

(3) Where a corporation is convicted of an offence under subsection (1) or (2), the maximum penalty that may be imposed on the corporation is \$50,000 and not as provided in those subsections.

Conflicts

151. If there is a conflict between a provision in this Part and a provision of any other Act authorizing a municipality to license a business, the section that is less restrictive of a municipality's power prevails.

Other by-laws

152. Sections 143 to 151 apply to municipalities in the exercise of a power to pass by-laws licensing businesses under any other section of this Act or any other Act.

UPPER-TIER MUNICIPALITIES

Upper-tier municipalities

153. Sections 143 to 152 apply with necessary modifications to the upper-tier municipalities mentioned in sections 154 to 159 respecting the powers to license businesses described in those sections.

Regional Municipality of Haldimand-Norfolk

154. (1) This section applies only to The Regional Municipality of Haldimand-Norfolk.

Licensing re: second-hand goods, auctioneers

(2) The upper-tier municipality has the power and a lower-tier municipality does not have the power to licence, regulate and govern,

- (a) salvage shops and salvage yards, including an automobile wrecking yard or premises;
- (b) dealers in second-hand goods, including persons who go from house to house or along highways to collect, purchase or obtain second-hand goods;
- (c) second-hand goods shops;
- (d) auctioneers and other persons putting up for sale goods or effects by public auction.

Vehicles

(3) A by-law under clause (2) (a), (b) or (c) may apply to a person using a vehicle for any of the purposes mentioned in those clauses as the agent or employee of another person.

Classes

(4) A license issued under clause (2) (a), (b) or (c) may authorize a person to deal in one or more class of second-hand goods as specified in the licence.

Definition

(5) In this section,

"second-hand goods" includes waste paper, rags, bottles, bicycles, automobile tires, old metal and other scrap material and salvage.

Regional Municipality of Hamilton-Wentworth

155. (1) This section applies only to The Regional Municipality of Hamilton-Wentworth.

Restriction

(2) A by-law passed by a lower-tier municipality for licensing, regulating and

governing any person mentioned in subsection (3) has no effect in respect of that person if a by-law passed by the upper-tier municipality under subsection (3) is in force for licensing, regulating and governing the same person in the same capacity.

Contractors

(3) An upper-tier municipality may license, regulate and govern,

- (a) building repair contractors;
- (b) drain repair contractors;
- (c) electrical contractors;
- (d) explosives contractors;
- (e) heating, air-conditioning and ventilation contractors;
- (f) plumbing contractors;
- (g) master building repairers;
- (h) master drain installers;
- (i) master electricians;
- (j) masters of explosives;
- (k) master plumbers; and
- (l) master warm air heating, air conditioning and ventilation installers.

Contents of by-law

(4) A by-law passed under subsection (3) may,

- (a) define the terms used in clauses (3) (a) to (l); and
- (b) provide for the payment to the lower-tier municipalities, in the manner set out in the by-law, of any licence fees, or any portion of them, collected by the upper-tier municipality.

Delegation

(5) The upper-tier municipality may delegate to any lower-tier municipality, on such terms as it considers appropriate, the authority to enforce a by-law passed under subsection (3) within the lower-tier municipality and, if the authority is delegated, any fines imposed as a result of the enforcement belong to the lower-tier municipality.

Report

(6) A lower-tier municipality may by resolution require the upper-tier municipality to investigate an alleged contravention of a licensing by-law passed under this section by the upper-tier municipality and to report to the lower-tier municipality.

Regional municipalities of Niagara, Waterloo

156. (1) This section applies only to the regional municipalities of Niagara and Waterloo.

Licensing cabs, vehicles

(2) The upper-tier municipality has the power and a lower-tier municipality does not have the power to licence, regulate and govern owners and drivers of cabs, tow trucks, buses and vehicles (other than motor vehicles) used for hire or any class of cabs, tow trucks, buses and vehicles for hire.

Licensing taxi-cab brokers, etc.

(3) The upper-tier municipality has the power and a lower-tier municipality does not have the power to licence, regulate and govern,

- (a) a person who acts as a taxi-cab broker by accepting calls for taxi-cabs used for hire and owned by someone other than the person, his or her immediate family or the person's employer;
- (b) salvage shops and salvage yards, including an automobile wrecking yard or premises;
- (c) second-hand goods shops; and
- (d) dealers in second-hand goods, including persons who go from house to house or along highways to collect, purchase or obtain second-hand goods.

Vehicles

(4) A by-law under clause (3) (b), (c) or (d) may apply to a person using a vehicle for any of the purposes mentioned in this section as the agent or employee of another person.

Classes

(5) A licence issued under clause (3) (b), (c), or (d) may authorize a person to deal in one or more class of second-hand goods as specified in the licence.

Scope

(6) A by-law of the upper-tier municipality under this section may apply to one or more lower-tier municipalities.

Report, Waterloo

(7) A lower-tier municipality in The Regional Municipality of Waterloo may by resolution require the upper-tier municipality to investigate an alleged contravention

of a licensing by-law passed under this section by the upper-tier municipality and to report to the lower-tier municipality.

Definition

(8) In this section,

"second-hand goods" includes waste paper, rags, bottles, bicycles, automobile tires, old metal and other scrap material and salvage.

Regional Municipality of Sudbury

157. (1) This section applies only to The Regional Municipality of Sudbury.

Licensing

(2) The upper-tier municipality has the power and a lower-tier municipality does not have the power to licence, regulate and govern,

- (a) persons who carry on the business of leasing mobile signs;
- (b) bill posters, advertising sign painters, bulletin board painters, sign posters and bill distributors;
- (c) electrical contractors and persons certified under the *Trades Qualification and Apprenticeship Act* to do electrical work or a person with equivalent qualifications by training or experience;
- (d) dealers in coal, oil and other fuel and persons who deliver the fuel;
- (e) persons carrying on the business of installing insulation in buildings; and
- (f) chimney-repairers and persons engaging in the business of altering, repairing or renovating buildings or structures.

Regional Municipalities of Sudbury, York

158. (1) This section applies only to the Regional Municipalities of Sudbury and York.

Licensing

(2) The upper-tier municipality has the power and a lower-tier municipality does not have the power to license, regulate and govern,

- (a) drain contractors, drain layers and persons who install septic tanks or repair or reconstruct drains, remove tree roots or other obstructions from drains and private drain connections; and
- (b) plumbing contractors and plumbers certified under the *Trades Qualification and Apprenticeship Act* to do plumbing work or a person with equivalent qualifications by training or experience.

Regional Municipality of York

159. (1) This section applies only to The Regional Municipality of York.

Licensing, septic tank services

(2) An upper-tier municipality may license, regulate and govern persons who carry on the business of providing septic tank cleaning and pumping services.

Licensing, lodging houses

(3) An upper-tier municipality may license, regulate and govern lodging houses and the keepers of lodging houses or any class of them.

Definition

(4) In subsection (3),

"lodging house" means a nursing home and any house or other building or portion of it in which persons are lodged for hire but does not include a hotel, hospital, nursing home, home for the young or the aged or institution if it is licensed, approved or supervised under any other Act.

Restriction

(5) A by-law of an upper-tier municipality under subsection (3) has no force in a lower-tier municipality in which a by-law passed by lower-tier municipality is in force in respect of the same class of lodging house.

Report

(6) A lower-tier municipality may by resolution require the upper-tier municipality to investigate an alleged contravention of a licensing by-law passed under section 158 or this section and to report to the lower-tier municipality.

NOTES ON SOURCES OF PART IV PROVISIONS MISCELLANEOUS POWERS

Proposed New Policies:

Section 160 (1)
Sections 165 and 166
Section 173
Section 181 (4)

Other Provisions:

The other provisions of Part IV are based on the following Acts:

Municipal Act
Retail Business Holidays Act.

PART IV
MISCELLANEOUS POWERS

CLOSING OF RETAIL BUSINESS ESTABLISHMENTS

Definition

160. (1) In this section,

"retail business establishment" means the premises where goods or services are sold or offered for sale by retail.

Hours

(2) A local municipality may require that all or any class of retail business establishments be closed to the public on all or any days of the week during any time between 6 p.m. of any day and 5 a.m. of the next day.

By-law

(3) A by-law under subsection (2) may,

- (a) apply during all or any part of the year;
- (b) apply to all or any part of the municipality;
- (c) exempt any class of retail business establishment from the by-law; and
- (d) deal differently with different classes of retail business establishments.

Holiday closings

(4) A local municipality may require that all or any class of retail business establishment be closed to the public on any day proclaimed by the head of council as a civic holiday.

Application of by-law

(5) A by-law under subsection (4) may apply to all or any part of the municipality.

Exemptions

(6) A by-law passed under this section does not apply to the sale or offering for sale by retail of,

- (a) goods or services in the form of or in connection with prepared meals or living accommodation; and
- (b) liquor under the authority of a licence or permit issued under the *Liquor Licence Act*.

Fines

(7) A by-law passed under this section may provide that a person who contravenes the by-law is guilty of an offence and on conviction is liable to a fine of not more than the greater of,

- (a) \$50,000; and
- (b) the gross sales of the retail business establishment for the period the establishment was open in contravention of the by-law.

Hamilton-Wentworth

161. (1) Section 160 applies with necessary modifications to The Regional Municipality of Hamilton-Wentworth.

Lower-tier municipalities

(2) No lower-tier municipality in The Regional Municipality of Hamilton-Wentworth shall exercise any powers under section 160.

GROUP HOMES

Definition

162. (1) In this section,

"group home" means a residence licensed or funded under a federal or provincial statute for the accommodation of three to ten persons, exclusive of staff, living under supervision in a single housekeeping unit and who, by reason of their emotional, mental, social or physical condition or legal status, require a group living arrangement for their well being.

Registration of group homes

(2) A local municipality may pass by-laws,

- (a) designating a person as the registrar of group homes;
- (b) providing for the registration and the annual renewal of registration, with the registrar, of group homes or such classes thereof as may be set out in the by-law;
- (c) prohibiting any person from owning or operating a group home that is not registered in accordance with a by-law passed under this section;
- (d) fixing fees for the registration and renewal of registration of group homes; and
- (e) authorizing the registrar to register and renew registrations required under clause (b).

Duty of registrar

(3) If an application is made to the registrar in the form prescribed by a by-law under subsection (2) for the registration or renewal of registration of a group home, the registrar shall register or renew the registration of the group home.

Inspection

(4) Where the registrar has reasonable and probable grounds to believe that a person is operating a group home that is not registered in accordance with a by-law passed under this section, the registrar or a person acting on his or her instructions may, under the authority of a search warrant issued under the *Provincial Offences Act*, enter and inspect the property for the purpose of determining whether or not the property is being used as a group home.

Zoning by-law required

(5) No municipality may pass by-laws under this section unless there is in effect in the municipality a by-law passed under section 34 of the *Planning Act* that permits the establishment and use of group homes in the municipality.

GARDEN SUITES

Agreements re garden suites

163. (1) A municipality that has the power to authorize the temporary use of a garden suite by a by-law passed under section 39 of the *Planning Act* may make by-laws for entering into agreements with any persons in respect of that garden suite.

Contents of agreement

(2) An agreement made under subsection (1) may deal with such matters related to the temporary use of the garden suite as the council of the municipality considers necessary or advisable, including,

- (a) the installation, maintenance and removal of the garden suite;
- (b) the period of occupancy of the garden suite by any of the persons named in the agreement; and
- (c) the monetary or other form of security that the council may require for actual or potential costs to the municipality related to the garden suite.

Definition

(3) In this section,

"garden suite" means a one-unit detached residential structure containing bathroom and kitchen facilities that is ancillary to an existing residential structure and that is designed to be portable.

TWO UNIT HOUSES

Registration of residential units in houses

164. (1) In this section,

"residential unit" means a unit that,

- (a) consists of a self-contained set of rooms located in a building or structure,
- (b) is used as a residential premises,
- (c) contains kitchen and bathroom facilities that are used only by the occupants of the unit,
- (d) is used as a single housekeeping unit, which includes a unit in which no occupant has exclusive possession of any part of the unit, and
- (e) has a means of egress to the outside of the building or structure in which it is located, which may be a means of egress through another residential unit; ("habitation")

"two-unit house" means a detached house, a semi-detached house or a row house which contains two residential units. ("maison à deux logements")

Registration

(2) A municipality which has the authority to pass by-laws under section 34 of the *Planning Act* may pass by-laws,

- (a) providing for the registration of two-unit houses or such classes of them as may be set out in the by-law and the revocation of registrations; and
- (b) appointing a registrar to register two-unit houses in a public register, to revoke registrations and to perform such other duties related thereto as may be set out in the by-law.

Content of by-law

(3) A by-law passed under this section may,

- (a) prohibit any person from operating or permitting the occupancy of more than one residential unit in a two-unit house unless the house is registered;
- (b) specify the standards which must be met to register a two-unit house or any class of two-unit houses;

- (c) require such inspections of two-unit houses as are necessary to determine, before registration, if they comply with the standards specified in the by-law;
- (d) designate one or more persons as inspectors for the purposes of this section; and
- (e) fix fees for the registration and inspection of two-unit houses.

Single registration

(4) A two-unit house, once registered, remains registered without payment of any renewal or other fees, unless the registration is revoked.

Requirement for standards

(5) The standards specified in the by-law for registration of a two-unit house may only include any combination of standards which apply to the two-unit house at the time of registration and which are prescribed,

- (a) in a by-law passed by the municipality, other than a by-law authorized by this section; and
- (b) by statute or regulation.

Search warrant

(6) Section 49.1 of the *Planning Act* applies with necessary modifications to an offence alleged to have been committed under a by-law passed under this section.

Obstruction

(7) No person shall obstruct or attempt to obstruct an inspector in carrying out an inspection under this section.

Offence

(8) Every person who contravenes subsection (7), and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence.

Appeal

(9) The decision of the registrar to refuse or revoke the registration of a two-unit house is subject to an appeal to the Ontario Court (General Division) and the decision of the court is final.

MISCELLANEOUS

Use of collection agency

165. If a municipality uses a registered collection agency in good standing under the *Collection Agencies Act* to recover a debt, including taxes, payable to the municipality, the collection agency may also recover its reasonable costs of collecting

the debt but those costs shall not exceed an amount approved by the municipality.

Sale of debt

166. (1) A municipality may sell any debt payable to the municipality to any other person.

Exception

(2) Subsection (1) does not apply to a debt that is taxes or deemed to be taxes.

Priority passed

(3) A person who acquires the debt has the priority of the municipality with respect to the debt.

Levy, farm land

167. (1) A local municipality may levy a special rate upon its taxpayers who are entered on the assessment roll in respect of land assessed as farm land as their annual membership fees in the Ontario Federation of Agriculture.

Special rates

(2) The special rate shall be expressed as a percentage of the assessment of property and shall not exceed .05 per cent.

Collection

(3) The special rate shall be levied and collected in the same manner as taxes but is not a lien on land and is not subject to late payment charges.

Objection

(4) A taxpayer is not required to pay the special rate if, within 30 days of receiving the tax bill which includes the special rate, the taxpayer notifies the treasurer in writing that the taxpayer objects to paying the special rate.

Amended bill

(5) Upon receipt of a notice under subsection (4), the treasurer shall delete the special rate from the tax roll and send an amended tax bill to the taxpayer.

Payment

(6) The treasurer shall, upon request, pay the special rates collected to the treasurer of the Ontario Federation of Agriculture for the upper-tier municipality in which the local municipality is located.

Termination of duty

(7) The duty of the treasurer to collect the special rates terminates on March 1 of the year following the year in which the rates were levied.

By-law continues

(8) A by-law under this section remains in force until it is amended or repealed and it is not necessary to pass the by-law annually.

Annual dues

168. (1) A local municipality may authorize the annual dues of members of any farm organization approved by the Minister of Agriculture, Food and Rural Affairs to be entered on the tax roll and collected in the same manner as taxes.

Application of by-law

(2) A by-law under this section applies only where the annual dues for all members of the farm organization are the same.

Notice

(3) If, before the tax roll is certified, the treasurer of the local municipality receives written notice from a member of a farm organization directing the annual dues of that member be collected in the same manner as taxes, the dues of the member shall be entered on the tax roll.

Discontinuation

(4) A member who has given a notice under subsection (3) may by similar notice require the treasurer to discontinue the collection of dues.

Due not a charge

(5) The dues do not form a lien upon land and are not subject to late payment charges.

Payment

(6) The treasurer shall, upon request, pay dues collected to the treasurer of the appropriate farm organization.

By-law continued

(7) A by-law under this section remains in force until amended or repealed and it is not necessary to pass the by-law annually.

Trailers

169. (1) A local municipality may license trailers located in the municipality, except in a trailer camp operated or licensed by the municipality, for 30 days or longer in any year and for prohibiting such trailers being located in the municipality, except in a trailer camp operated or licensed by the municipality, without a licence.

Exception

(2) No by-law passed under this section applies to a trailer when located in the municipality only for the purpose of sale or storage.

Licence fees

(3) Licence fees may be charged for every month or portion of a month that the trailer is located in the municipality and the licence fees, except for the first 30 days, may be made payable in advance but no licence fee shall be more than \$20 per month.

Exception

(4) No licence fee shall be charged in respect of a trailer assessed under the

Assessment Act.

Definition

(8) In this section,

"trailer" means any vehicle constructed to be attached and propelled by a motor vehicle and that is capable of being used by persons for living, sleeping or eating, even if the vehicle is jacked-up or its running gear is removed.

Tourist and trailer camps

170. (1) A local municipality may license, regulate and govern tourist camps and trailer camps.

Contents of by-law

(2) A by-law under this section may,

- (a) require trailer camps to be divided into lots, each for the occupancy of one trailer;
- (b) provide for the issue of licenses for a period of one month or longer to the owner of a trailer camp for each lot to be occupied by a trailer and prohibit the use of any lots for the occupancy of trailers without a licence;
- (c) require a licence fee payable by the owner of a trailer camp for each lot and require the fees to be paid in advance.

Limitation

(3) If a lot is to be made available only for a trailer that is assessed under the *Assessment Act*, no licence fee shall be charged by the municipality.

Definitions

(4) In this section,

"tourist camp" includes auto camp and land equipped with cabins used for the accommodation of the public and any land used as a camping or parking ground for the public whether or not a fee is charged for the use; ("camp pour touristes")

"trailer camp" means any land on which a trailer, as defined in section 169, is kept. ("parc à roulettes")

Pensions, definitions

171. (1) In this section,

"approved pension plan" means a pension, superannuation or benefit fund or plan to which a municipality or local board makes contribution under any Act, except the *Public Service Pension Act*, the *Teachers' Pension Act* and the *Ontario Municipal Employees Retirement System Act*; ("régime de retraite agréé")

"employee" means any salaried officer or any other employee of the municipality or of a local board and includes a member of the police force of the municipality and any person or class of person prescribed as an employee; ("employé")

"local board" includes any school board, public utility commission, transportation commission, public library board, board of park management, local board of health, police services board and any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes, including school purposes, of a municipality or of two or more municipalities or portions of them but does not include a hospital established under any Act and operated by a municipality; ("conseil local")

"retired employee" means a person who was formerly an employee and to whom or in respect of whom a pension is being paid under an approved pension plan or under the Ontario Municipal Employees Retirement System; ("employé à la retraite")

"service" means a person's employment with a municipality or local board and may include,

- (a) employment with any municipality or local board in Canada,
- (b) employment with the civil service of Canada or of any province of Canada,
- (c) employment with any board, commission or public institution established under any Act of Canada or any province of Canada, and
- (d) active service during World War II or the Korean War,
 - (i) in His or Her Majesty's naval, army or air forces or in the Canadian or British Merchant Marine, or
 - (ii) in any naval, army or air force that was allied with His or Her Majesty's forces and that is designated by the Lieutenant Governor in Council. ("service")

"year's maximum pensionable earnings" means the Year's Maximum Pensionable Earnings as defined in the *Canada Pension Plan*. ("maximum des gains annuels ouvrant droit à pension")

Municipality or local board may provide pensions

(2) A municipality or local board may provide pensions for,

- (a) its employees or any class of them; and

- (b) the widows, widowers and children of such employees.

Municipalities may agree to provide pensions

(3) Any two or more municipalities may agree to provide pensions for their employees or any class of them, and if they do, this section applies with necessary modifications to the pensions; the agreement must provide that one of the parties shall be deemed to be a municipality and the other party or parties shall be deemed to be a local board or boards.

Termination of approved pension plan

(4) A municipality or local board that makes contributions to an approved pension plan may discontinue contributions to or terminate the plan or may transfer the assets of the plan to another approved pension plan or to the Ontario Municipal Employees Retirement Fund.

Approval not required

(5) Despite any special Act, the approval of the Minister or Ministry is not required to amend any by-law relating to an approved pension plan.

Payments to be deducted from salary, etc.

(6) A municipality or local board shall deduct by instalments the amount that each employee who is a member of the pension plan is required to pay in accordance with the plan from his or her salary, wages or other remuneration.

Payments by local board to municipality

(7) If an employee of a local board is a member of a pension plan provided by a municipality, the local board shall pay to the treasurer of the municipality the payments and deductions made for past and future service of the employee.

Payments to be deemed current expenditures

(8) Payments made under this section or under the *Ontario Municipal Employees Retirement System Act* with respect to past service may be on a deferred basis or provided by the issue of debentures and raised in a subsequent year or years and payments with respect to past service and future service shall be deemed to be current expenditures.

Maximum pension benefit

(9) Despite any other Act, a municipality or local board shall not contribute to an approved pension plan or to the Ontario Municipal Employees Retirement Fund for the provision of a pension with respect to an employee that is in excess of an annual amount of 2 per cent of the employee's average annual earnings during the 60 consecutive months during which his or her earnings as an employee were highest multiplied by the number of years of his or her service up to 35 years and reduced in any year in which he or she is entitled to a pension under the *Canada Pension Plan* by 0.7 per cent of the lesser of such average annual earnings or the average of the year's maximum pensionable earnings for the year in which he or she ceases to be employed by the municipality or local board and for each of the two preceding years multiplied by the number of years of his or her service after January 1, 1966 up to 35 years.

Exception

(10) Subsection (9) does not apply,

- (a) so as to reduce any benefit provided under the terms of an approved pension plan in force on December 31, 1965; or
- (b) where an employee retires having less than 10 years of service.

Transfer from approved pension plan

(11) Despite any other Act, if an employee who has been contributing to an approved pension plan terminates his or her employment with the municipality or local board and without intervening employment becomes an employee of Ontario or Canada, any other municipality or local board or any board, commission or agency established under any provincial Act, he or she is entitled, in lieu of a refund of the contributions to the approved pension plan plus any interest on them, to the pension benefits and any other benefits that would be payable under the plan in respect of his or her employment with the municipality or local board to the date of the termination as if he or she had continued in that employment until his or her death or retirement age.

Same

(12) If subsection (11) applies, the municipality or local board shall authorize, on the request of the former employee, the transfer to any plan maintained to provide pension benefits for employees of which the former employee has become a member, if such a transfer is permitted under the terms of the plan to which the transfer is to be made, of an amount of money equal to the larger of,

- (a) the contributions made by the former employee under the approved pension plan, plus any interest on them; or
- (b) the present value, calculated as of the date of the transfer on the basis of generally accepted actuarial methods, of the pension benefits and any other benefits under the approved pension plan to which the former employee is entitled.

Transfer to approved pension plan

(13) Despite any other Act, if a person who was an employee of Ontario, Canada, a municipality or local board or any board, commission or agency established under any provincial Act becomes, on or after March 1, 1948, an employee of a municipality or local board that makes contributions to an approved pension plan, the municipality or local board may accept the transfer of any money to the employee's credit in a superannuation or pension plan maintained for employees and may apply it for the employee's benefit in accordance with the terms of the approved pension plan.

Restriction upon refund

(14) If an amount of money is transferred under subsection (12) or (13) to a plan and the employee or former employee is entitled to a refund under the plan, only that portion of the amount so transferred that is attributable to contributions made by

the employee or former employee, as determined by the employer responsible for the administration of the plan from which the amount is transferred, may be refunded to the employee or former employee, and the remainder shall be credited to the plan to which the amount is transferred.

Regulations

(15) The Minister may make regulations prescribing any person or class of persons to be an employee of a municipality or local board for the purposes of this section.

Same

(16) The Lieutenant Governor in Council may make regulations prescribing limitations or restrictions applicable to pensions provided by municipalities and local boards.

Retirement incentives

172. (1) Subject to subsection (4), every municipality may provide to its employees, or any class of them, financial incentives in respect of their retirement and severance payments.

Not pensions

(2) Payments or incentives provided under this section shall be deemed not to be pensions under this or any other Act.

Retroactive

(3) Municipalities shall be deemed to have always had the power to make by-laws under this section.

Regulations

(4) The Lieutenant Governor in Council may make regulations prescribing limitations or conditions which apply in respect of payments or incentives authorized under this section.

Transition

173. (1) Despite the repeal of the *City of Mississauga Act, 1988* and the *Town of Markham Act, 1989*,

- (a) any pension benefit earned or accruing to members of a council and their surviving spouses and children under the repealed Act on or before the date this Act comes into force shall continue, but no contribution for a pension under that Act shall be made with respect to any period after that date; and
- (b) an agreement for the administration of a pension mentioned in clause (a) may continue.

Same

(2) Despite the repeal of section 13 of the *City of Toronto Act, 1997 (No.2)* and

section 25 of the *Municipality of Metropolitan Toronto Act*,

- (a) any pension benefit earned or accruing to members of the former metropolitan council or of the council of the former area municipalities and their surviving spouses and children under that section on or before the date this Act comes into force shall continue, but no contribution for a pension under that Act shall be made with respect to any period after that date; and
- (b) an agreement for the administration of a pension mentioned in clause (a) may continue.

Insurance

174. (1) A municipality may contract for insurance, exchange with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the *Insurance Act* and self-insure against risks that may involve pecuniary loss or liability on the part of the corporation and may pay premiums for that purpose.

Limitation

(2) Despite subsections 387 (1) and (2) of the *Insurance Act*, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in such securities as the participating municipality with the most limited investment powers may invest in under section 371.

Reserve funds

(3) The money raised for a reserve fund of a municipal reciprocal exchange may be spent, pledged or applied to a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the exchange and that may be subject to claims arising while they were members of the exchange, agree in writing and if section 386 of the *Insurance Act* is complied with.

Local board

(4) A local board, as defined in the *Municipal Affairs Act*, has the same powers to contract for insurance, to exchange reciprocal contracts of indemnity and to self-insure as are conferred upon the council of a municipality under this section.

Liability insurance

175. (1) A municipality may contract for insurance and, despite the *Insurance Act*, be or act as an insurer, to protect its employees or any class of them against risks that may involve liability on the part of the employees and pay premiums for the insurance.

Payment of damages

(2) A municipality may pay,

- (a) any damages or costs awarded against any of its employees or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees, including while acting in the performance of any statutory duty; or
- (b) any sum required in connection with the settlement of such an action or other proceeding and for assuming the cost of defending the employees in the action or proceeding.

Definitions

(3) In this section,

"employee" means any salaried officer, or any other person in the employ of the municipality or of a local board and includes,

- (a) a member of the police force of the municipality,
- (b) persons that provide their services on behalf of the municipality without remuneration, exclusive of reimbursement of expenses or honoraria, if council of the municipality has passed a by-law designating such persons or classes of persons as employees for the purposes of this section, and
- (c) any other person or class of person designated as an employee by the Minister; ("employé")

"local board" means a local board as defined in the *Municipal Affairs Act*. ("conseil local")

Local boards

(4) A local board has the same powers to provide insurance for or to make payments to or on behalf of its employees as are conferred upon the council of a municipality under this section in respect of its employees.

Former employees

(5) A by-law passed under this section may provide that it applies to a person who was an employee at the time the cause of action or other proceeding arose but who before judgment or other settlement of the action or proceeding has ceased to be an employee.

Application

(6) This section does not apply to an act or omission that occurred before June 20, 1978.

Insurance Act does not apply

(7) The *Insurance Act* does not apply to a municipality acting as an insurer for the purpose of this section.

Reciprocal contracts of indemnity

176. (1) A municipality may exchange with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the *Insurance Act* for the purpose of protecting the employees of the municipality or its local boards or any class of such employees against those risks which the corporation may insure or self-insure under section 174.

Limitation

(2) Despite subsections 387 (1) and (2) of the *Insurance Act*, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in such securities as the participating municipality with the most limited investment powers may invest in under section 371.

Reserve fund

(3) The money raised for a reserve fund of a municipal reciprocal exchange may be spent, pledged or applied to a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the exchange and that may be subject to claims arising while they were members of the exchange, agree in writing and if section 386 of the *Insurance Act* is complied with.

Application

(4) Subsections 176 (3) to (6) apply with necessary modifications to the powers conferred by this section.

Accident, etc., insurance re members of council and local boards

177. (1) The council of a municipality may provide by contract with an insurer licensed under the *Insurance Act*,

- (a) group accident insurance to indemnify any member of council or of a local board of the municipality, or his or her estate, against loss in case the member is accidentally killed or injured; and
- (b) group public liability and property damage insurance to indemnify any member of council or of a local board of the municipality, or his or her estate, in respect of loss or damage for which the member has become liable by reason of injury to persons or property or in respect of loss or damage suffered by reason of injury to his or her own property.

Course of duties

(2) Subsection (1) applies if the members are travelling on the business of the municipality or the local board or are performing duties as a member of council or of the local board either within or outside the municipality

Joint local board

(3) If a local board is composed of members appointed by the councils of two or more municipalities, each council shall have in respect of the members appointed by it

all the powers for providing insurance for a member of a local board that are conferred on a council under this section.

Liability insurance

178. (1) Every municipality may at any time contract for insurance, act as an insurer despite the *Insurance Act* and exchange with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the *Insurance Act* for the purpose of protecting the members of the council or of its local boards, as defined in the *Municipal Affairs Act*, against risks that may involve liability on the part of the members and may pay premiums for that insurance.

Payment of damages

(2) Every municipality may pay,

- (a) any damages or costs awarded against any members of its council or local boards or expenses incurred by them as a result of any action or other proceeding, except a proceeding brought under the *Municipal Conflict of Interest Act*, arising out of acts or omissions done or made by them in their capacity as members or officers of the municipality or local board including while acting in the performance of any statutory duty; or
- (b) any sum required in connection with the settlement of such an action or other proceeding and for assuming the cost of defending the member in the action or proceeding.

Insurance Act does not apply

(3) The *Insurance Act* does not apply to a municipality acting as an insurer for the purposes of this section.

Investment of funds

(4) Despite subsections 387 (1) and (2) of the *Insurance Act*, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in such securities as the participating municipality with the most limited investment powers may invest in under section 371.

Reserve fund

(5) The money raised for a reserve fund of a municipal reciprocal exchange may be spent, pledged or applied to a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the exchange and that may be subject to claims arising while they were members of the exchange agree in writing and if section 386 of the *Insurance Act* is complied with.

Local boards

(6) A local board has the same powers to provide insurance for or to make payments to or on behalf of its members as are conferred upon the council of a municipality under this section in respect of its members.

Former members of council

(7) A by-law passed under this section may provide that it applies to a person who was a member of council or a local board, as the case may be, at the time the cause of action or other proceeding arose but who before judgment or other settlement of the action or proceeding has ceased to be a member of the council or local board.

Application

(8) This section does not apply to an act or omission that occurred before December 15, 1978.

Sick leave credit gratuities

179. (1) A municipality may establish a plan of sick leave credit gratuities for employees or any class of them but on the termination of employment no employee is entitled to more than an amount equal to the salary, wages or other remuneration for one-half the number of days standing to his or her credit up to a maximum of one-half year's earnings at the rate received by him or her immediately before termination of employment.

Definition

(2) In this section,

"employee" means an employee as defined in section 171;

Allowing of credits on transfer of employment

(3) A by-law passed under this section may provide, upon such terms may be prescribed, for placing to the credit of an employee formerly employed by another municipality or local board which had established a sick leave credit plan under this or any other Act the whole or any part of the sick leave credits standing to the credit of the employee in the plan of the municipality or local board formerly employing the employee.

Local boards

(4) Any local board, except a school board, may establish a plan of sick leave credit gratuities for employees or any class of them and this section applies with necessary modifications to the local board.

Insurance, health, etc.

180. (1) Subject to the *Health Insurance Act*, a municipality may provide by contract either with an insurer licensed under the *Insurance Act* or with an association registered under the *Prepaid Hospital and Medical Services Act*, and may pay the whole or part of the costs of,

- (a) group life insurance for employees or retired employees or any class of them;
- (b) group accident insurance or group sickness insurance for employees or retired employees or any class of them and their spouses and children; and

- (c) hospital, medical, surgical, nursing or dental services or payments for those services for employees or retired employees or any class of them and their spouses and children.

Local board

(2) Any local board may provide insurance and hospital, medical, surgical, nursing or dental services and payment for those services in the same manner and for the same classes of persons as the council of a municipality, and this section applies with necessary modifications to the local board.

Contributions to health plans

(3) A municipality may pay the whole or part of the cost to employees or retired employees of the plan of hospital care insurance or of health services insurance provided for under the *Health Insurance Act*.

Local board

(4) Any local board may pay the whole or part of the cost to employees or retired employees of the plan of hospital care insurance or of health services insurance provided for under the *Health Insurance Act* and this section applies with necessary modifications to the local board.

Benefits for council members

(5) A municipality may provide for the members of its council,

- (a) any benefits that may be provided for the employees of the municipality under this section; and
- (b) any other benefits of a like nature.

Definitions

(6) In this section,

"employee" means an employee as defined in section 171; ("employé") and

"retired employee" means a person who was formerly an employee of the municipality or of a local board or who was formerly a member of the police force of the municipality, and any person or class of person designated as a retired employee by the Minister. ("employé à la retraite")

Remuneration and expenses

181. (1) Despite any Act, a municipality may pay remuneration to and any part of the expenses incurred by the members of its council or a local board of the municipality and by the officers and employees of the municipality or local board in their capacity as members, officers or employees.

Local boards

(2) A local board of a municipality may pay remuneration to and the expenses

incurred by its members, officers and employees to the extent that the municipality is able to do so under this or any other Act.

Actual expenses

(3) The expenses paid under this section shall be the expenses actually incurred for any purpose or an amount in lieu of the expenses actually incurred which, in the opinion of the council or local board, is a reasonable estimate of the actual expenses that would be incurred for that purpose.

Limitation

(4) No part of the remuneration of a member of a council or local board paid under this section is deemed to be for expenses incidental to his or her duties as a member and a municipality or local board shall not provide that any part of the remuneration is for expenses.

Statement

182. (1) The treasurer of a municipality shall in each year on or before March 31 provide to the council of the municipality an itemized statement on remuneration and expenses paid in the previous year to,

- (a) each member of council in respect of his or her services as a member of the council or any other body, including a local board, to which the member has been appointed by council or on which the member holds office by virtue of being a member of council;
- (b) each member of council in respect of his or her services as an officer or employee of the municipality or other body described in clause (a); and
- (c) each person, other than a member of council, appointed by the municipality to serve as a member of any body, including a local board, in respect of his or her services as a member of the body.

Mandatory item

(2) The statement shall identify the by-law under which the remuneration or expenses were authorized to be paid.

Statement to be provided to municipality

(3) If, in any year, any body, including a local board, pays remuneration or expenses to one of its members who was appointed by a municipality, the body shall on or before January 31 in the following year provide to the municipality an itemized statement of the remuneration and expenses paid for the year.

Public records

(4) Despite the *Municipal Freedom of Information and Protection of Privacy Act*, statements provided under subsections (1) and (3) are public records.

NOTES ON SOURCES OF PART V PROVISIONS TRANSFER OF POWERS

Proposed New Policies:

Section 184 (1) (a)

Section 186 (1) (a)

Other Provisions:

The other provisions of Part V are based on the Municipal Act, as amended by the Savings and Restructuring Act, 1996.

PART V TRANSFER OF POWERS

Definitions

183. (1) In this Part,

"elector" means a person whose name appears on the voters' list, as amended up until the close of voting on voting day, for the last regular election preceding the coming into force of a by-law under section 184 or 186; ("électeur")

"lower-tier power" means a power a lower-tier municipality or its local boards may exercise under any Act, including any limitations on the power; ("pouvoir de palier inférieur")

"upper-tier power" means a power an upper-tier municipality or its local boards may exercise under any Act, including any limitations on the power. ("pouvoir de palier supérieur")

Conflicts

(2) In the event of a conflict between a by-law under clause 184 (1) (a) or 186 (1) (a) and a provision of any Act or regulation, the by-law prevails.

Same

(3) In the event of a conflict between a regulation under section 188 and a provision of any Act or regulation, the regulation under section 188 prevails.

Other powers not affected

(4) Nothing in this Part restricts the power to transfer powers under any other provision of this Act or under any other Act.

By-laws re: transfer of powers

184. (1) An upper-tier municipality may pass a by-law to provide for,

- (a) the transfer of all or part of a prescribed lower-tier power to the upper-tier municipality from one or more of its lower-tier municipalities which are specified in the by-law; and
- (b) transitional matters to facilitate the assumption of the lower-tier power.

Conditions

(2) A by-law under subsection (1) shall not come into force unless,

- (a) a majority of all votes on the council of the upper-tier municipality are cast in its favour;
- (b) a majority of the councils of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes have passed resolutions giving their consent to the by-law; and

- (c) the total number of electors in the lower-tier municipalities which have passed resolutions under clause (b) form a majority of all the electors in the upper-tier municipality.

No repeal

(3) A provision of a by-law passed under clause (1) (a) shall not be repealed in whole or in part after it comes into force.

Exception

(4) Despite subsection (3), if a by-law of an upper-tier municipality passed under subsection (1) is in force, the by-law shall be deemed to be repealed to the extent it conflicts with a by-law of a lower-tier municipality passed under section 186 which comes into force at a later date.

Effect of by-law

185. (1) When a by-law passed under section 184 comes into force,

- (a) the upper-tier municipality may exercise the transferred lower-tier power of the lower-tier municipalities specified in the by-law;
- (b) a lower-tier municipality specified in the by-law and its local boards are bound by the by-law and no longer have the power to exercise the transferred lower-tier power;
- (c) an existing by-law or resolution of a lower-tier municipality and its local boards that relate to the transferred lower-tier power shall, to the extent it applies in any part of the lower-tier municipality, be deemed to be a by-law or resolution of the upper-tier municipality; and
- (d) the existing by-law or resolution referred to in clause (c) shall remain in force in that part of the lower tier municipality until the earlier of two years after the transfer by-law comes into force and the day the existing by-law or resolution is repealed by the upper-tier municipality.

Continuation of matters

(2) When a lower-tier power is transferred to an upper-tier municipality under section 184, the upper-tier municipality may continue anything that the lower-tier municipality began under the transferred lower-tier power before the transfer but did not complete.

By-laws re: transfer of powers

186. (1) A lower-tier municipality may pass a by-law to provide for,

- (a) the transfer of all or part of a prescribed upper-tier power from its upper-tier municipality to one or more of the lower-tier municipalities forming part of the upper-tier municipality for

municipal purposes which are specified in the by-law; and

- (b) transitional matters to facilitate the assumption of the upper-tier power.

Coming into force

(2) A by-law under subsection (1) shall not come into force unless,

- (a) at least half of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes, excluding the lower-tier municipality which passed the by-law, have passed resolutions giving their consent to the by-law;
- (b) the total number of electors in the lower-tier municipalities which have passed resolutions under clause (a) and in the lower-tier municipality which passed the by-law form a majority of all the electors in the upper-tier municipality; and
- (c) the council of the upper-tier municipality has passed a resolution giving its consent to the assumption of the power and a majority of all the votes on the council were cast in favour of the resolution.

No repeal

(3) A provision of a by-law passed under clause (1) (a) shall not be repealed in whole or in part after it comes into force.

Exception

(4) Despite subsection (3), if a by-law of a lower-tier municipality passed under subsection (1) is in force, the by-law shall be deemed to be repealed to the extent it conflicts with a by-law of an upper-tier municipality passed under section 184 which comes into force at a later date.

Effect of by-law

187. (1) When a by-law under section 186 comes into force,

- (a) each lower-tier municipality specified in the by-law is bound by the by-law and may exercise the transferred upper-tier power but may do so only for its own purposes;
- (b) the upper-tier municipality and its local boards are bound by the by-law and no longer have the power to exercise the transferred upper-tier power in those lower-tier municipalities;
- (c) an existing by-law or resolution of an upper-tier municipality and its local boards that relates to the transferred upper-tier power shall, to the extent it applies in any part of a lower-tier municipality specified in the transfer by-law, be deemed to be a by-law or resolution of the lower-tier municipality; and

- (d) the existing by-law or resolution referred to in clause (c) shall remain in force in that part of the lower-tier municipality until the earlier of two years after the transfer by-law comes into force and the day the existing by-law or resolution is repealed by the lower-tier municipality.

Continuation of matters

(2) When an upper-tier power is transferred to a lower-tier municipality under section 186, the lower-tier municipality may continue anything that the upper-tier municipality began under the transferred upper-tier power before the transfer but did not complete to the extent the thing applies to the lower-tier municipality.

Regulations

188. (1) The Minister may, despite any Act, make regulations,

- (a) prescribing lower-tier powers for the purpose of section 184;
- (b) prescribing upper-tier powers for the purpose of section 186;
- (c) providing for the continuation, cessation or otherwise of by-laws and resolutions;
- (d) imposing conditions and limitations on powers of an upper-tier municipality and lower-tier municipalities under sections 184 and 186;
- (e) imposing conditions and limitations on lower-tier powers and upper-tier powers transferred under sections 184 and 186;
- (f) providing that any body performing a public function is a local board for the purpose of sections 183 and 188;
- (g) providing for any matter that, in the opinion of the Minister, is necessary or desirable to allow a municipality to which a power has been transferred under section 184 or 186 to exercise the power;
- (h) providing for any matter that, in the opinion of the Minister, is necessary or desirable to allow a municipality from which a power has been transferred under sections 184 and 186, to exercise its remaining powers; and
- (i) providing for any transitional matter related to the transfer of a power under sections 184 and 186.

Scope of regulation

(2) A regulation under this section may be general or specific in its application and may be restricted to those municipalities specified in the regulation.

Dissolution of local boards

189. (1) In this section,

"local board" includes any body performing any public function prescribed by regulation but does not include a police services board.

Dissolution

(2) Despite any Act, if a local board is a local board of a single municipality, the municipality may by by-law dissolve or make prescribed changes to the local board.

Joint local boards

(3) Despite any Act, if a local board is a local board of two or more municipalities, any of the municipalities may pass a by-law to dissolve or make prescribed changes to the local board.

Restriction

(4) A municipality does not have the power to pass a by-law under subsection (2) or (3) to dissolve a local board until a regulation under subsection (8) relating to the dissolution of that type of local board is in force.

Coming into force

(5) A by-law under subsection (3) does not come into force until at least half of the municipalities, excluding the municipality which passed the by-law, have passed a resolution giving their approval to the by-law.

Amendments, repeal

(6) When a by-law under subsection (3) comes into force, the by-law shall be deemed to be a by-law passed under subsection (3) by each of the municipalities and may only be amended or repealed by a by-law passed in accordance with subsections (3) and (5).

Powers unaffected

(7) Nothing in this section restricts the power to dissolve or make changes to a local board under any other provision of this Act or under any other Act.

Regulations

(8) For the purposes of this section the Minister may, despite any Act, make regulations,

- (a) providing that any body performing any public function is a local board;
- (b) providing that a local board is a local board of the municipality specified in the regulation;
- (c) prescribing changes that may be made to a local board;
- (d) providing that a municipality does not have the power to dissolve

or make a prescribed change to a local board specified in the regulation;

- (e) imposing conditions and limitations on the powers of a municipality under this section;
- (f) providing that, for the purposes specified in the regulation, a municipality shall be deemed to be a local board of the type dissolved or changed under this section;
- (g) providing that, for the purposes specified in the regulation, a municipality shall stand in the place of a local board dissolved or changed under this section;
- (h) providing for matters that, in the opinion of the Minister, are necessary or desirable to allow the council of a municipality to act as a local board, to exercise the powers of a local board or to stand in the place of a local board for any purpose;
- (i) providing that the provisions of any Act specified in the regulation do not apply to the council of a municipality acting as a local board, exercising the powers of a local board or standing in the place of a local board for any purpose;
- (j) providing for the continuation, cessation or amendment of any or all by-laws and resolutions of a local board which is dissolved or changed under this section;
- (k) providing that a municipality or local board pay money to another municipality or local board; and
- (l) providing for transitional matters related to a dissolution of or change to a local board under this section.

Scope

(9) A regulation under this section may be general or specific in its application and may be restricted to those municipalities and local boards specified in the regulation.

NOTES ON SOURCES OF PART VI PROVISIONS MUNICIPAL RESTRUCTURING

Proposed New Policies:

Section 190 (2)
Section 191 (12)
Section 199 (1)
Section 204 (1) & (2)

Other Provisions:

The other provisions of Part VI are based on the following Acts:

Municipal Act, as amended by the Savings and Restructuring Act, 1996
Municipal Boundary Negotiations Act.

PART VI MUNICIPAL RESTRUCTURING

Restructuring of municipalities

190. (1) The purposes of sections 191 to 196 are,

- (a) to provide for a process which allows municipal restructuring to proceed in a timely and efficient manner;
- (b) to facilitate municipal restructuring over large geographic areas; and
- (c) to facilitate municipal restructuring of a significant nature which may include elimination of a level of municipal government, transfer of municipal powers and responsibilities and changes to municipal representation systems.

Interpretation

(2) In sections 191 to 196 a reference to a municipality does not include the City of Toronto or a regional municipality or its lower-tier municipalities except with respect to minor restructuring proposals described in subsection 191 (12).

Definitions

191. (1) In this Part,

"local body" means, in respect of unorganized territory, a local body as described in the regulations; ("organisme local")

"resident" means a person who is a permanent resident or a temporary resident having a permanent dwelling within a geographic area and who is a Canadian citizen and is at least 18 years of age; ("résident")

"restructuring" means,

- (a) annexing part of a municipality to another municipality,
- (b) annexing a geographic area that does not form part of a municipality to a municipality,
- (c) amalgamating a municipality with another municipality,
- (d) separating a local municipality from an upper-tier municipality for municipal purposes,
- (e) joining a local municipality to an upper-tier municipality for municipal purposes,

- (f) dissolving all or part of a municipality, and
- (g) incorporating the inhabitants of a geographic area as a municipality; ("restructuration")

Proposal to restructure

(2) A municipality or local body in a geographic area may, subject to subsection (3), make a restructuring proposal to restructure municipalities and unorganized territory in the geographic area by submitting to the Minister a restructuring report containing,

- (a) a description of the restructuring proposal in a form and in such detail as the Minister may require; and
- (b) proof in a form satisfactory to the Minister that,
 - (i) the restructuring proposal has the prescribed degree of support of the prescribed municipalities and local bodies in the geographic area,
 - (ii) the support was determined in the prescribed manner, and
 - (iii) the municipalities and local bodies which support the restructuring proposal meet the prescribed criteria.

Limitation

(3) A restructuring proposal shall not provide for a type of restructuring other than a prescribed type of restructuring.

Implementation

(4) If a restructuring proposal and report under subsection (2) meet the requirements of this section, the Minister shall, by order, implement the restructuring proposal in accordance with the regulations made under subsection (13).

Limitation

(5) The Minister shall not make an order under subsection (4) to implement the restructuring proposal in a geographic area if any part of the geographic area is in a geographic area for which a commission has been established under section 192.

Filing

- (6) The Minister shall,
 - (a) publish an order under subsection (4) in *The Ontario Gazette*; and
 - (b) file a copy of an order under subsection (4) with the clerk of each municipality to which the order applies.

Inspection

- (7) The clerk shall make the order available for public inspection.

Not regulation

(8) An order of the Minister under subsection (4) is not a regulation within the meaning of the *Regulations Act*.

Regulations

- (9) The Minister may make regulations,

- (a) in respect of unorganized territory, providing that any body or class of persons is a local body for the purposes of this section;
- (b) for the purpose of subsection (2),
 - (i) establishing types of restructuring,
 - (ii) providing which municipalities and local bodies may support a restructuring proposal with respect to each type of restructuring,
 - (iii) providing for the degree of support required to support a restructuring proposal with respect to each type of restructuring,
 - (iv) providing for the manner of determining the support, and
 - (v) providing for criteria which must be met by the municipalities and local bodies supporting a restructuring proposal;
- (c) providing that a municipality in a geographic area for which a restructuring proposal has been submitted under subsection (2),
 - (i) shall not exercise a specified power under any Act,
 - (ii) shall exercise, in the specified manner, a specified power under any Act, and
 - (iii) shall obtain the approval of a person or body specified in the regulation before exercising any of its powers under any Act.

Scope

(10) A regulation under subsection (9) may be general or particular in its application.

Differing support requirement

(11) Without limiting subsection (10), a regulation under subsection (9) may provide for different support requirements for restructuring proposals which are minor and restructuring proposals which are not minor.

Minor restructuring proposal

(12) A restructuring proposal is minor if,

- (a) the proposal provides for one or more annexations of part of a local municipality to another local municipality and makes any changes to the boundaries of upper-tier municipalities necessary to reflect the annexations;
- (b) the proposal does not provide for any type of restructuring other than described in clause (a); and
- (c) the Minister, after reviewing the proposal, is of the opinion that it is of a minor nature.

Regulations

(13) Despite any Act, the Lieutenant Governor in Council may make regulations setting out the powers that may be exercised by the Minister or a commission established under section 192 in implementing a restructuring proposal.

Commission

192. (1) The Minister may establish a commission on or before December 31, 1999 at the request of a municipality in a geographic area or at the request of 75 or more residents of unorganized territory in a geographic area.

Purpose

(2) The purpose of the commission is to develop a proposal for restructuring municipalities and unorganized territory in the geographic area or in such greater area as the Minister may prescribe.

Restructuring proposal

(3) The commission shall develop a restructuring proposal for the prescribed geographic area or for such part of it as the commission considers advisable.

Limitation

(4) A restructuring proposal shall not provide for a type of restructuring other than a prescribed type of restructuring.

Consultation

(5) The commission shall consult with each municipality in the prescribed geographic area when developing the restructuring proposal and may consult with such other bodies and persons as the commission considers appropriate.

Draft proposal

(6) The commission shall prepare a draft of the restructuring proposal and shall give a copy of the draft to each municipality in the prescribed geographic area and make it available for inspection by members of the public in the prescribed geographic area.

Public meeting

(7) The commission shall hold at least one public meeting at which any person who attends is given an opportunity to make representations about the draft.

Written submissions

(8) The commission shall invite written submissions about the draft and shall establish a deadline for receiving them.

Inspection

(9) The commission shall make the submissions available for inspection by each municipality and by members of the public in the prescribed geographic area.

Notice to municipalities

(10) The commission shall notify each municipality in the prescribed geographic area of its opportunity to make representations and shall advise them where they can inspect written submissions received by the commission.

Notice to the public

(11) The commission shall give notice to the public in the prescribed geographic area advising them of the opportunity,

- (a) to inspect the draft;
- (b) to make representations at the public meeting and to give written submissions by the deadline; and
- (c) to inspect the written submissions received by the commission.

Final proposal

(12) After considering the representations and submissions about the draft, the commission shall finalize the restructuring proposal and shall give a copy of it to each municipality in the prescribed geographic area and make it available for inspection by members of the public in the prescribed geographic area.

Same

(13) The commission shall give notice to the public in the prescribed geographic area advising them of the opportunity to inspect the restructuring proposal.

Method of giving public notice

(14) The commission shall give notice to the public under this section,

- (a) by publishing the information in a newspaper that, in the opinion

of the commission, is of general circulation in the prescribed geographic area, including a newspaper provided at no cost; or

- (b) if the commission considers that there is no such newspaper, by such other means as the commission considers will give members of the public in the prescribed geographic area reasonable notice.

Commission orders

193. (1) The commission may make orders implementing the restructuring proposal.

Powers

(2) For the purposes of implementing the proposal, the commission has the powers set out in the regulation made under subsection 191 (13).

Restriction

(3) The commission shall not finalize the restructuring proposal or make orders to implement it until at least 30 days after the later of,

- (a) the day on which the final public meeting about the draft is held; and
- (b) the deadline for receiving written submissions about the draft.

Publication and filing

(4) The commission shall publish an order in *The Ontario Gazette* and shall file a copy of the order with the clerk of each municipality to which the order applies.

Inspection

(5) The clerk shall make the order available for public inspection.

Not regulation

(6) An order of the commission is not a regulation within the meaning of the *Regulations Act*.

Regulations

(7) The Minister may, for the purposes of sections 192 to 196, make regulations,

- (a) establishing a commission;
- (b) providing for the composition of the commission, which may be composed of one person;
- (c) describing the geographic area for which the commission shall develop a restructuring proposal;
- (d) in respect of unorganized territory, providing that any body or class of persons is a local body;

- (e) establishing types of restructuring;
- (f) authorizing the commission to determine its costs and to apportion the costs among the municipalities and local bodies in the geographic area for which the commission was established; and
- (g) providing that a municipality in a geographic area for which a commission has been established to develop a restructuring proposal under subsection 192 (1),
 - (i) shall not exercise a specified power under any Act,
 - (ii) shall exercise, in the specified manner, a specified power under any Act, and
 - (iii) shall obtain the approval of a person or body specified in the regulation before exercising any of its powers under any Act.

Scope

(8) A regulation under subsection (7) may be general or particular in its application.

Procedures

194. The Minister may require that a commission follow such procedures as the Minister may provide, in addition to the procedures set out in this Part.

Debt

195. Costs which the commission apportions to a municipality or local body are a debt of the municipality or local body to the Crown.

Principles to be considered

196. The Minister may establish restructuring principles that shall be considered,

- (a) by municipalities and local bodies when developing a restructuring proposal to be submitted to the Minister under subsection 191 (2);
- (b) by a commission when developing restructuring proposals under subsection 192 (2); and
- (c) by the Ontario Municipal Board when making a decision under section 197, 198 or 199.

Incorporation in unorganized territory

197. (1) The Minister, with the approval of the Lieutenant Governor in Council, may apply to the Ontario Municipal Board to incorporate the inhabitants of a

geographic area in unorganized territory as a single-tier municipality.

Boundaries

(2) The Board may incorporate the geographic area or incorporate a geographic area which is larger or smaller than the geographic area for which the application is made.

Overlap

(3) If the geographic area incorporated as a single-tier municipality includes areas in more than one territorial district as set out in the *Territorial Division Act*, the municipality shall form part of the territorial district specified by the Board.

Annexation

198. (1) The Ontario Municipal Board may annex a geographic area in unorganized territory to a local municipality upon the application of,

- (a) the local municipality;
- (b) the Minister with the approval of the Lieutenant Governor in Council; or
- (c) at least 25 residents.

Boundaries

(2) The Board may annex a geographic area that is larger or smaller than the geographic area for which the application is made.

Dissolution

199. (1) The Minister, with the approval of the Lieutenant Governor in Council, may apply or a single-tier municipality may apply to the Ontario Municipal Board to dissolve all or part of the single-tier municipality in a territorial district as set out in the *Territorial Division Act*.

Powers of Board

(2) Upon an application under subsection (1), the Ontario Municipal Board may,

- (a) dissolve all or part of the single-tier municipality;
- (b) annex all or part of the single-tier municipality to another municipality; or
- (c) do any combination of (a) and (b).

Dissolution

(3) The Board may dissolve or annex a geographic area that is larger or smaller or different than the geographic area for which the application is made.

Public hearing

200. (1) The Ontario Municipal Board shall hold a public hearing before making an order under this Part.

Powers

(2) In making an order under this Part, the Board has the same powers as the Minister has in a regulation made under subsection 191 (13) and that regulation applies, with necessary modifications, to the power being exercised.

Annexation

(3) If the Board annexes an area to a local municipality under this Part, the area forms part of the upper-tier municipality, if any, or territorial district as set out in the *Territorial Division Act* in which the local municipality is located.

No petition

(4) Section 95 of the *Ontario Municipal Board Act* does not apply to an order of the Board under this Part.

Deferred proceedings

(5) The Minister may notify the Board in writing that in his or her opinion an application to the Board under this Part should be deferred and upon so doing all proceedings in the application are stayed until the Minister notifies the Board in writing that they may be continued.

Conflicts with official plan

201. A by-law of a municipality approving a restructuring proposal under section 191 that requests the establishment of a commission under section 192 or authorizes an application to the Ontario Municipal Board under this Part is not invalid on the ground that it conflicts with an official plan.

Transition

202. If, as a result of a restructuring under this Part, all or part of an existing municipality forms part of a new municipality, the council of the existing municipality shall, within that part, continue to have the same powers as it had before the restructuring until the council of the new municipality is organized.

Order prevails

203. (1) An order of the Minister under section 191, a commission under section 193 or the Ontario Municipal Board under this Part,

- (a) is conclusive evidence that all conditions precedent to the making of the order have been complied with and that the municipalities have been restructured in accordance with this Act; and
- (b) prevails over any Act or regulation, other than this Part or a regulation made under this Part, with which it conflicts.

Exception

(2) Despite clause (1) (b) an order under this Part does not affect any exemption or partial exemption from taxes or rates or an authority to provide for those exemptions in any Act.

Taxes

(3) If, as a result of an order under this Part, an area of a municipality is subject to taxes or rates which do not apply generally across the municipality, section 21 of the *Assessment Act* applies with respect to those taxes or rates as if the area were the whole municipality.

Change of name

204. (1) A municipality may change its name so long as the new name is not the same as the name of another municipality.

Regulations

(2) The Minister may make regulations,

- (a) limiting the names a municipality may have;
- (b) establishing requirements for the names a municipality may have;
- (c) requiring a municipality to give notice of its intention to change its name and of the actual change of name in the manner and form and to the persons prescribed;
- (d) requiring a municipality to pay the costs of the Crown and any person arising as a result of the municipality changing its name.

Application

(3) A regulation under this section may be general or specific in its application.

NOTES ON SOURCES OF PART VII PROVISIONS MUNICIPAL COUNCILS

Proposed New Policies:

Section 207 (1) to (3) and (5) to (8)
Section 209 (3)
Section 211 (8)
Section 217 (1)
Section 221
Section 226

Other Provisions:

The other provisions of Part VII are based on the following Acts:

Municipal Act, as amended by the Better Local Government Act, 1996
Municipal Elections Act, 1996
Regional Municipalities Act, as amended by the Better Local Government Act, 1996
12 Regional Acts, as amended by the Better Local Government Act, 1996

PART VII MUNICIPAL COUNCILS

COMPOSITION OF COUNCILS

Composition of councils continued

205. On the day this section comes into force the composition of the council of a municipality, the method of electing or appointing its members, the number of votes given to each member and the titles of its members shall be the same as they were on the day before this section comes into force.

Composition of council of local municipality

206. (1) A local municipality may change the composition of its council subject to the following rules:

1. There shall be a minimum of five members, one of whom shall be the head of council.
2. The head of council shall be elected by general vote.
3. The members of council shall be elected in accordance with the *Municipal Elections Act, 1996*.
4. The members shall be elected by general vote or wards or by any combination of general vote and wards.
5. The representation on the council of an upper-tier municipality shall not be affected by a by-law of a local municipality under this section.

Notice

(2) Before passing a by-law under this section, council shall give notice of its intention to pass the by-law and shall hold at least one public meeting to consider the matter.

Titles

(3) The council of a local municipality may change the titles for the head of council and members of council.

Coming into force

(4) A by-law under this section does not come into force until the day the newly-elected council is organized,

- (a) after the first regular election following the passing of the by-law;
or
- (b) if the by-law is passed in the year of a regular election before voting day, after the second regular election following the passing

of the by-law.

Election

(5) The regular election held immediately before the coming into force of a by-law passed under this section shall be conducted as if the by-law was already in force.

Composition of upper-tier council

207. (1) An upper-tier municipality may change the composition of its council subject to the following rules:

1. There shall be a minimum of five members, one of whom shall be the head of council.
2. The head of council shall be elected by general vote or shall be appointed by the members of council.
3. The members of council, except the head of council, shall be elected in accordance with the *Municipal Elections Act, 1996* to the upper-tier council or to the council of one of its lower-tier municipalities.
4. The head of council shall be qualified to be elected as a member of council of the upper-tier municipality.
5. The term of the head of council shall be one year or the same as the term of council.
6. If the members of council are directly elected to the upper-tier council and not to the council of a lower-tier municipality, the members shall be elected by general vote or wards or by any combination of general vote and wards.

Same

(2) Without restricting the generality of subsection (1), the power to change the composition of council under subsection (1) includes the power to,

- (a) change the size of council;
- (b) change the method of electing members to the council, including having members directly elected to the upper-tier council and not to the council of a lower-tier municipality, members elected to serve on both the upper-tier and lower-tier councils or members elected to the lower-tier councils and appointed to the upper-tier council by the lower-tier municipalities, or a combination of methods of election;
- (c) have one member representing more than one lower-tier municipality;

- (d) change the term of office of the head of council;
- (e) require that if a member of council is appointed by the members of council as the head of the upper-tier council, the member is no longer entitled to hold office on the council of the lower-tier municipality or the upper-tier municipality or both; and
- (f) require that if a member of council is appointed by the members of council as the head of the upper-tier council, the appointed member must hold office on the council of a lower-tier municipality.

Number of votes

(3) An upper-tier municipality may change the number of votes given to any member but each member shall have at least one vote.

Change of titles

(4) The council of an upper-tier municipality may change the titles for the head of council and members of council.

Regional municipalities

(5) A regional municipality shall not pass a by-law under subsection (1) or (3) until the Lieutenant Governor in Council has, by regulation, declared that the regional municipality has the powers under this section.

Regulations

(6) The Lieutenant Governor in Council may make regulations authorizing a regional municipality to exercise any of the powers in subsection (1) or (3).

Condition

(7) The Lieutenant Governor in Council shall not make a regulation under subsection (6) unless the Minister has received a resolution from the regional municipality requesting the regulation.

Application

(8) A regulation under subsection (6) may be general or specific in its application and may apply differently to different municipalities.

Notice

208. (1) Before passing a by-law under section 207, council shall give notice of its intention to pass the by-law and shall hold at least one public meeting to consider the matter.

Coming into force of by-law

(2) A by-law passed under section 207 making changes described in clauses 207 (2) (b) and (c) is not valid unless,

- (a) a majority of all votes on the upper-tier council are cast in its favour;
- (b) a majority of the councils of all lower-tier municipalities forming part of the upper-tier municipality have passed resolutions consenting to the by-law; and
- (c) the total number of electors in the lower-tier municipalities that have passed resolutions referred to in clause (b) form a majority of all the electors in the upper-tier municipality.

Commencement

(3) Despite subsection (2), a by-law passed under section 207 does not come into force until the day the newly-elected council is organized following,

- (a) the first regular election following the passing of the by-law; or
- (b) if the by-law is passed in the year of a regular election before voting day, the second regular election following the passing of the by-law.

Election

(4) The regular election held immediately before the coming into force of a by-law passed under this section shall be conducted as if the by-law was already in force.

Definition

(5) In this section,

"elector" means a person whose name appears on the voters' list, as amended up until the close of voting on voting day, for the last regular election preceding the coming into force of a by-law under section 207.

Appointment of head, one year term

209. (1) If the term of office of an appointed head of council of an upper-tier municipality is one year, the council of the upper-tier municipality shall, in each year of its term, appoint the head of council at its first meeting at which a majority of the members is present.

Appointment of head, same term as council

(2) If the term of office of an appointed head of council of an upper-tier municipality is the same as the term of council, the council of the upper-tier municipality shall, in the first year of its term, appoint the head of council at its first meeting at which a majority of the members is present.

Deemed resignation

(3) A head of council who is appointed by the members of council and who by virtue of a by-law under clause 207 (2) (e) is not entitled to continue to hold office as a member of an upper-tier or lower-tier council, or both, shall be deemed to have

resigned as a member of the council or councils and the office or offices become vacant.

One vote

(4) Each member of the council has one vote in the appointment of the head of council.

Consistency with by-law

(5) Despite section 235, the head of council shall be appointed in the manner provided by by-law passed before the appointment of the head.

Conflicts

210. In the event of a conflict between section 206, 207 or 209 or a by-law passed under those sections and any other Act in respect of the composition of a council, the number of votes given to each member or the titles of its members, section 206, 207 or 209 or a by-law passed under those sections prevails.

WARDS

Establishment of wards

211. (1) Despite any Act, the council of a municipality may divide or redivide the municipality into wards or dissolve the existing wards.

Public meetings

(2) Before passing a by-law under subsection (1), the council of the municipality shall,

- (a) hold at least one public meeting at which any person who attends has an opportunity to make representation with respect to the matter; and
- (b) ensure notice of the public meeting is given to members of the public in the municipality.

Notice

(3) Within 15 days after a by-law is passed under subsection (1), the council of the municipality shall ensure that notice of the by-law is given to members of the public in the municipality specifying the last date for filing a notice of appeal under subsection (4).

Appeal

(4) Within 35 days after a by-law is passed under subsection (1), the Minister or any other person or agency may appeal to the Ontario Municipal Board by filing a notice of appeal with the municipality setting out the objections to the by-law and the reasons in support of the objection.

To O.M.B

(5) Within 15 days after the last day for filing a notice of appeal under subsection (4), the municipality shall forward any notices of appeal to the Ontario

Municipal Board.

Other material

(6) The municipality shall provide any other information or material that the Board requires in connection with the appeal.

Board decision

(7) The Board shall hear the appeal and may, despite any Act, make an order affirming, amending or repealing the by-law.

Restriction

(8) A ward of a lower-tier municipality shall not include parts of more than one ward of an upper-tier municipality.

Criteria for boundaries

(9) A municipality and the Board shall have regard to the prescribed criteria for establishing ward boundaries when exercising its powers under this section.

Regulations

(10) The Minister may make regulations prescribing criteria for establishing ward boundaries and the regulations may be general or specific in their application.

Coming into force of by-law

(11) A by-law of a municipality under this section comes into force on the day the newly-elected council of the municipality is organized following,

- (a) the first regular election after the by-law is passed if the by-law is passed before January 1 in the year of an election and,
 - (i) no notices of appeal are filed,
 - (ii) notices of appeal are filed and are all withdrawn before January 1 in the year of the election, or
 - (iii) notices of appeal are filed and the Board issues an order to affirm or amend the by-law before January 1 in the year of the election; or
- (b) the second regular election after the by-law is passed, in all other cases except where the by-law is repealed by the Board.

Election

(12) Despite subsection (11), where a by-law comes into force on the day the newly-elected council of a municipality is organized following a regular election, that election shall be conducted as if the by-law was already in force.

Petition re: wards

212. (1) Electors in a municipality may present a petition to the council asking the council to pass a by-law dividing or redividing the municipality into wards or dissolving the existing wards.

Number of electors required

(2) The petition requires the signatures of 75 electors if the municipality has 5,000 electors or fewer and the signatures of 150 electors if the municipality has more than 5,000 electors.

Failure to act

(3) If the council does not pass a by-law in accordance with the petition within 30 days after receiving the petition, any of the electors who signed the petition may apply to the Ontario Municipal Board to have the municipality divided or redivided into wards or to have the existing wards dissolved.

Order

(4) The Board shall hear the application and may, despite any Act, make an order dividing or redividing the municipality into wards or dissolving the existing wards and subsections 211 (6), (8), (9) and (10) apply with necessary modifications to the making of the order.

Coming into force

(5) An order of the Board under this section comes into force on the day the newly-elected council of the municipality is organized following,

- (a) the first regular election after the order is made, if the order is made before January 1 in the year of the election; or
- (b) the second regular election after the order is made, if the order is made on or after January 1 in the year of a regular election but before voting day.

Election

(6) Despite subsection (5), if an order comes into force on the day the newly-elected council of a municipality is organized following a regular election, that election shall be conducted as if the order was already in force.

Deemed by-law

(7) Once an order of the Board is in force, the order shall be deemed to be a by-law of the municipality and may be amended or repealed by the municipality under section 211.

ELIGIBILITY

Eligibility, local municipality

213. Every person is qualified to be elected or to hold office as a member of a council of a local municipality,

- (a) who is entitled to be an elector in the local municipality under section 17 of the *Municipal Elections Act, 1996*; and
- (b) who is not disqualified by this or any other Act from holding the office.

Eligibility, upper-tier municipality

214. Every person is qualified to be elected or to hold office as a member of a council of an upper-tier municipality,

- (a) who is entitled to be an elector in a lower-tier municipality within the upper-tier municipality under section 17 of the *Municipal Elections Act, 1996*; and
- (b) who is not disqualified by this or any other Act from holding the office.

Ineligible

215. (1) The following are not eligible to be elected a member of a council or to hold office as a member of a council:

- 1. Except in accordance with section 30 of the *Municipal Elections Act, 1996*, an employee of the municipality.
- 2. A judge of any court.
- 3. A member of the Assembly as provided in the *Legislative Assembly Act* or of the Senate or House of Commons of Canada.
- 4. Except in accordance with Part III of the *Public Service Act*, a crown employee as defined in that Act.

Disqualification

(2) A member of council of a municipality is disqualified from holding office if, at any time during the term of office of that member, he or she,

- (a) ceases to be a Canadian citizen;
- (b) is not a resident, the owner or tenant of land or the spouse of an owner or tenant of land in the municipality, in the case of a member of council of a local municipality, or in a lower-tier municipality within the upper-tier municipality, in the case of a

member of council of an upper-tier municipality; or

- (c) would be prohibited under this or any other Act from voting in an election for the office of member of council of the municipality if an election was held at that time.

VACANCIES

Vacant seat

216. (1) The office of a member of council of a municipality becomes vacant if the member,

- (a) becomes disqualified from holding the office of a member of council under section 213, 214 or 215;
- (b) has neglected or refused to accept office or to make the prescribed declarations within the prescribed time;
- (c) is absent from the meetings of council for three successive months without being authorized to do so by a resolution of council;
- (d) resigns from his or her office and the resignation is effective under section 219;
- (e) is appointed to fill any vacancy on the same council;
- (f) has his or her office declared vacant in any judicial proceeding;
- (g) forfeits his or her office under this or any other Act; or
- (h) dies, whether before or after accepting office and making the prescribed declarations.

Dual vacancies

(2) If either of the offices of a person who is a member of council of both a local municipality and its upper-tier municipality becomes vacant under this section, the other office also becomes vacant.

Declaration

217. (1) If the office of a member of a council becomes vacant under section 216, the council shall at its next meeting declare the office to be vacant.

Upper-tier declaration

(2) If an upper-tier municipality declares the office of one of its members who also holds office on the council of a local municipality to be vacant, the council of the upper-tier municipality shall immediately forward a copy of its declaration to the council of the local municipality.

Lower-tier declaration

(3) If a local municipality declares the office of one of its members who also holds office on the council of the upper-tier municipality to be vacant, the council of the local municipality shall immediately forward a copy of its declaration to the council of the upper-tier municipality.

Restriction

218. (1) No person may hold more than one elected office governed by the *Municipal Elections Act, 1996* at the same time anywhere in Ontario.

Election void

(2) If a person is nominated for and his or her name appears on the ballots for more than one office and he or she is elected to any of those offices, his or her election is void and the office is vacant.

Resignation as member

219. (1) A member of council may resign from office, with the consent of the majority of the members present at a council meeting as noted in the minutes and, subject to subsections (2) and (3), his or her office on the council shall then be vacant.

Exclusion

(2) The member shall not vote on a motion as to his or her own resignation.

Restriction

(3) Despite subsection (1), the consent of the majority of the members present at the meeting is not effective if it would reduce the number of members of the council to less than a quorum and, if the member resigning from office is a member of the councils of both a local municipality and its upper-tier municipality, the consent of the majority is not effective if it would reduce the number of members of either council to less than a quorum.

Resignation of head of council

220. Despite section 219, a member of an upper-tier council who has been appointed as head of the council by the members of council and who continues to hold the office on the upper-tier council to which the member was originally elected or appointed may resign from the office of head of council by notice in writing filed with the clerk of the municipality and the office then becomes vacant.

Filling vacancies

221. (1) If a vacancy occurs in the office of a member of council, the council shall, subject to this section,

- (a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or
- (b) require a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*.

Dual vacancies

(2) If the offices of a person who is a member of council of both a local municipality and its upper-tier municipality become vacant, the local council and not the upper-tier council shall fill the vacancy in accordance with subsection (1).

Court-ordered election

(3) If an order is made in any judicial proceeding requiring a by-election be held to fill a vacancy on a council, the clerk shall hold the by-election in accordance with the *Municipal Elections Act, 1996*.

Vacancy, head of council

(4) Despite subsections (1) to (3), if the head of council is required to be appointed by the members of council, the council shall fill a vacancy in the office of head of council by appointment in the same manner as the head was originally appointed.

Rules applying to filling vacancies

(5) The following rules apply to filling vacancies:

1. A council shall appoint a person or require a by-election to be held to fill a vacancy under subsection (1) or (4) within 60 days after the day a declaration of vacancy is made with respect to the vacancy under section 217.
2. Despite paragraph 1, if a court declares an office to be vacant, a council shall act to fill the vacancy under subsection (1) or (4) within 60 days after the day the court makes its declaration.
3. If a court orders a by-election be held to fill a vacancy, the clerk shall hold a by-election to fill the vacancy under subsection (3) within 60 days after the day the order is made.
4. Despite subsections (1) to (3), if a vacancy occurs after March 31 in the year of a regular election, the vacancy shall be filled by appointing a person in accordance with clause (1)(a).
5. Despite subsections (1) to (4), if a vacancy occurs within 60 days before voting day of a regular election, a municipality is not required to fill the vacancy.

Term

222. A person appointed or elected to fill a vacancy under section 221 shall hold office for the remainder of the term of the person he or she replaced.

Application to court

223. (1) Any elector entitled to vote at the election of members of a council may apply to the Ontario Court (General Division) for a declaration that the office of a member of the council has become vacant in accordance with this Act.

Judicial finding

(2) If the court finds that the office of a member of the council has become vacant, it may order the member removed from office and declare the office vacant.

Application of S.O. 1996, c. 32

(3) Subsection 83 (3) and sections 85, 86 and 87 of the *Municipal Elections Act, 1996* apply to the application as if it were an application under section 83 of that Act.

Combined application

(4) The application may be combined with an application under section 83 of the *Municipal Elections Act, 1996*, in which case the applications shall be heard and disposed of together.

Minister's order

224. (1) If the council of a municipality or a local board of a municipality is unable to hold a meeting for a period of 60 days because of a failure to obtain a quorum, the Minister may by order declare all the offices of the members of the council or local board, as the case may be, to be vacant and a by-election shall be held in accordance with the *Municipal Elections Act, 1996*.

Timing

(2) The 60 day period referred to in subsection (1) commences on the day of the first meeting that could not be held because of a failure to obtain a quorum.

Interim order

(3) Where the Minister makes an order under subsection (1), or the offices of a majority of the members of a council or of a local board are for any reason declared vacant, the Minister may by order exercise or appoint one or more persons to exercise the duties and obligations of the council or local board until such time as a by-election is held in accordance with the *Municipal Elections Act, 1996*, and the members so elected have taken office.

Absence of head

225. A municipality may by by-law or resolution appoint a member of the council to act in the place of the head of council when the head of council is absent or refuses to act or the office is vacant and while so acting such member has all the rights, powers and authority of the head of council.

Temporary vacancy

226. (1) If a person who is a member of the councils of a local municipality and its upper-tier municipality is unable to fulfil his or her duties as a member of those councils for a period exceeding one month, the local council may appoint one of its members as an alternate member of the upper-tier council to act in place of the member until such time as the member is able to resume his or her duties.

Exception

(2) Subsection (1) does not authorize the appointment of an alternate head of

council of the upper-tier municipality.

Substitution

227. A municipality may, with the written consent of the head of council, appoint a member of council to act in the place of the head of council on any body, other than a police services board or the council of another municipality, of which the head of council is a member by virtue of being head of council.

NOTES ON SOURCES OF PART VIII PROVISIONS PRACTICES AND PROCEDURES

Proposed New Policies:

Section 228 (1) to (3)
Section 229 (1) & (2)
Section 244
Sections 246 & 247
Section 248 (3), (4), (7), (8)(g) & (10)(c)
Section 250 (2)
Sections 251 to 253
Section 255
Sections 256 (3) to (6)

Other Provisions:

The other provisions of Part VIII are based on the following Acts:

Municipal Act, as amended by the Better Local Government Act, 1996
Municipal Elections Act, 1996
Regional Municipal Act, as amended by the Better Local Government Act, 1996
12 Regional Acts, as amended by the Better Local Government Act, 1996

PART VIII PRACTICES AND PROCEDURES

First council meeting

228. (1) The first meeting of the council of a local municipality after a regular election shall be held not later than seven days after its term commences.

Same

(2) The first meeting of the council of an upper-tier municipality after a regular election shall be held after the councils of the lower-tier municipalities have held their first meeting under subsection (1), but in any event not later than 14 days after its term commences.

Exception

(3) Despite subsection (2), if none of the members of an upper-tier council are members of lower-tier councils, the first meeting of the council of an upper-tier municipality after a regular election shall be held not later than 14 days after its term commences.

Membership on both councils

(4) If a person is elected to the councils of both a lower-tier and an upper-tier municipality or is appointed by the council of a lower-tier municipality to the council of an upper-tier municipality, the clerk of the lower-tier municipality shall, immediately after the election or appointment, certify to the clerk of the upper-tier municipality the name of each person so elected or appointed.

Restriction

(5) A person elected or appointed under subsection (4) shall not take the seat on the council of the upper-tier municipality until the clerk of the upper-tier municipality has received the certificate under subsection (4) in respect of that person.

Declarations of office

(6) No business shall be conducted at the first meeting of a council until after the declarations of office in the English or French version of the prescribed form have been made by all members who present themselves for that purpose.

Council organized

(7) A council shall be deemed to be organized when the declarations of office have been made by a sufficient number of members to form a quorum.

Location

229. (1) The council of a municipality shall hold its meetings within the municipality, except as provided in the procedure by-law of the municipality.

Exception

(2) Despite subsection (1), a meeting of the councils of two or more municipalities for the consideration of matters of common interest may be held within any of those municipalities or in a municipality adjacent to any of them.

Emergencies

(3) Despite subsection (1) and section 23, in the event of an emergency,

- (a) the meetings of a municipal council may be held at any convenient location within or outside the municipality; and
- (b) the municipal council may acquire and hold land at that location and erect buildings on it for the purposes of the municipality.

Quorum

230. (1) A majority of the members of a municipal council is necessary to form a quorum with the following exceptions:

- 1. In the regional municipalities of Durham, Hamilton-Wentworth and Niagara and the County of Oxford a majority of members representing at least one-half of the lower-tier municipalities is necessary to form a quorum.
- 2. In the regional municipalities of Haldimand-Norfolk, Halton, Sudbury, Waterloo and York and the District Municipality of Muskoka a majority of members representing a majority of the lower-tier municipalities is necessary to form a quorum.
- 3. In The Regional Municipality of Peel a majority of members representing all lower-tier municipalities is necessary to form a quorum.

Variation

(2) The council of a municipality referred to in paragraphs 1, 2 and 3 of subsection (1) may reduce its quorum requirement but may not reduce it to less than a majority of its members.

Presiding member

231. The head of council shall preside at all meetings of the council.

Calling of meetings

232. Subject to the procedure by-law passed under section 246,

- (a) the head of the council may at any time call a special meeting; and
- (b) upon receipt of a petition of the majority of the members of council, the clerk shall call a special meeting for the purpose and at the time mentioned in the petition.

Voting

233. Except as otherwise provided, every member of a council shall have one vote.

Tie votes

234. Any question on which there is a tie vote shall be deemed to be lost, except where otherwise provided by any Act.

Open voting

235. No vote shall be taken by ballot or by any other method of secret voting, and every vote so taken is of no effect.

Recorded vote

236. (1) If a member present at a vote requests immediately before or after the taking of the vote that the vote be recorded, each member present, except a member who is disqualified from voting by any Act, shall announce his or her vote openly and the clerk shall record each vote.

Failure to vote

(2) A failure to vote under subsection (1) by a member who is qualified to vote shall be deemed to be a negative vote.

Language of by-laws

237. (1) The by-laws and resolutions of a municipality shall be passed in English or in both English and French.

Official plan

(2) An official plan adopted by a municipality shall be in English or in both English and French.

Proceedings

(3) Every council and every committee of council may conduct its proceedings in English or French or in both English and French.

Minutes

(4) Despite subsection (3), the minutes of the proceedings shall be kept in English or in both English and French.

Proviso

(5) Nothing in this section,

(a) affects an obligation imposed by or under any Act to make, keep, use, file, register or submit any form, book, document or other paper of any kind in the language or languages specified by or under the Act; or

(b) affects any requirement at law to give reasonable notice.

Translations

(6) If a record is submitted by a municipality to a provincial ministry in French, the municipality shall, at the request of the minister of that ministry, supply an English translation of it.

Municipal code

238. If a council passes a comprehensive general by-law that consolidates and includes the provisions of any by-law previously passed by the council,

- (a) the provisions in the comprehensive general by-law shall be deemed to have come into force on the day the original by-law came into force; and
- (b) any condition or approval required by law to the making of the original by-law shall, where such condition was satisfied or approval obtained, be deemed to have been satisfied or obtained in respect of the corresponding provision in the comprehensive general by-law.

Seal

239. (1) Every by-law of a municipality,

- (a) shall be under the seal of the corporation; and
- (b) shall be signed by the clerk and by the head of the council or presiding officer at the meeting at which the by-law was passed.

Evidence

(2) Every by-law purporting to be so sealed and signed, when produced by the clerk or any other officer of the municipality charged with the custody of it, is admissible in evidence in all courts without proof of the seal or signature.

Copies

(3) A copy of a by-law, purporting to be certified by the clerk under the seal of the corporation as a true copy, is admissible in evidence in all courts without proof of the seal or signature.

Failure to seal

(4) If by oversight the seal of the corporation was not affixed to a by-law, it may be affixed at any time afterwards and when so affixed, the by-law is as valid as if it had been originally sealed.

By-laws upon application

240. (1) Where by this or any other Act a by-law may be passed by a council upon the application of a prescribed number of electors or inhabitants of the municipality or geographic area, the by-law shall not be finally passed until the clerk has certified that the application was sufficiently signed.

Powers

(2) For the purposes of inquiring into the sufficiency of the application, the clerk has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

Effect of certificate

(3) The certificate of the clerk is conclusive that the application was sufficiently signed.

Restriction on quashing by-law

241. A by-law passed in good faith under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law.

QUASHING BY-LAWS

Definition

242. (1) In this section,

"by-law" includes an order or resolution.

Application to quash by-law

(2) Upon the application of a resident of a municipality or of a person interested in a by-law of the municipality, the Ontario Court (General Division) may quash the by-law in whole or in part for illegality.

Other municipality

(3) A municipality or any ratepayer of it may apply to the Ontario Court (General Division) to quash a by-law of another municipality if it is alleged that the by-law injuriously affects the first municipality and the by-law is illegal in whole or in part.

Inquiry

(4) If an application alleges a contravention of subsection 90 (3) of the *Municipal Elections Act, 1996*, alone or in conjunction with any other ground of objection, the Ontario Court (General Division) may direct an inquiry into the alleged contravention to be held before an official examiner or a judge of the Ontario Court (General Division), and the witnesses in the inquiry shall be examined under oath.

Return of evidence

(5) After the inquiry is completed, the official examiner or judge shall return the evidence taken to the Ontario Court (General Division) to form part of the evidence in the motion to quash.

Status quo maintained

(6) When an order directing an inquiry has been made under subsection (4) and a copy of it left with the clerk of the municipality, nothing shall be done under the by-law until the application is disposed of unless the court orders otherwise.

Other cases

(7) In other cases, the court may direct that nothing shall be done under the by-law until the application is disposed of.

Timing

(8) An application to quash a by-law in whole or in part, excluding a debenture by-law registered under section 368, shall be made within one year after the passing of the by-law.

Exception

(9) Despite subsection (8) if a by-law required the assent of the electors and was not submitted for or did not receive that assent, an application to quash the by-law may be made at any time.

RECORDS

Inspection of records

243. (1) Any person may, at all reasonable times, inspect any of the records under the control of the clerk, including,

- (a) by-laws and resolutions of the municipality and of its local boards;
- (b) minutes and proceedings of meetings, whether regular, special or committee meetings of the council or local board;
- (c) records considered at a meeting, except during that part of a meeting determined by the council or local board to be closed to the public;
- (d) the records of the council;
- (e) statements of remuneration and expenses prepared under section 182.

Certified copies

(2) Upon request, the clerk shall, within a reasonable time, provide a certified copy under seal of the municipality of any record referred to in subsection (1) to any applicant who pays the fee established by council.

Retention of records

244. (1) A municipality shall retain and preserve securely, and in an accessible format, the records of the municipality and of its local boards.

Same, local boards

(2) Despite subsection (1), a local board which has ownership and control of its records shall retain and preserve securely such records in an accessible format.

Agreement

(3) A municipality or, with the agreement of the council, a local board which has ownership and control of its records, may enter into an agreement for archival services for the purposes of subsection (1) with,

- (a) an archivist who is not an employee or former employee of the municipality or local board; or
- (b) a local, regional or university archives.

Transfer of records

(4) If a municipality or local board has entered into an agreement under subsection (3), the council or the board may transfer any record of the municipality or local board to the archivist or archives.

Restriction

(5) Despite subsection (4), a council or board shall not transfer to an archivist or archives the original of any by-law or resolution of the municipality or local board which is in force, or the operation of which is not spent.

Effect of transfer

(6) Records transferred to an archivist or an archives pursuant to an agreement under subsection (3) remain, for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, under the ownership and control of the municipality or of a local board thereof if designated as an institution under that Act.

Joint local boards

(7) If a local board is a local board of more than one municipality, the affected councils shall be jointly responsible for the retention and secure preservation, in an accessible format, of the records of that local board.

Joint agreement

(8) The affected councils may enter into an agreement under subsection (3).

Duties of archivist

(9) An archivist or archives which has entered into an agreement under subsection (3) shall,

- (a) retain and preserve securely, and in an accessible format, the records transferred to it; and
- (b) permit any person, at all reasonable times, to inspect any of the records transferred to it.

Role of municipality

(10) A municipality and a local board shall ensure that an archivist or archives fulfils the obligations under subsection (9).

Retention schedules

245. (1) All records of a municipality or a local board, including a local board which has ownership and control of its records, shall be retained by the municipality or local board in accordance with a by-law establishing schedules of retention periods approved by the municipal auditor.

Joint local boards

(2) All records of a local board which is a local board of more than one municipality shall be retained by the local board in accordance with a resolution adopted by a majority of the affected councils establishing schedules of retention periods approved by the auditor of the board.

Destruction of records

(3) Records of a municipality or local board may be destroyed only in accordance with a by-law under subsection (1) or a resolution under subsection (2).

Application to archivist

(4) Subsections (1) to (3) apply also to records transferred to an archivist or archives under subsection 244 (4).

Photocopies

(5) A by-law or resolution passed under this section may provide that a photocopy of a record shall be deemed to be the original for the purposes of the by-law or resolution if the original has been destroyed in accordance with this section or the by-law or resolution.

Admissibility

(6) Nothing in this section renders admissible in evidence a copy of a record that is not otherwise admissible by statute or the law of evidence.

NOTICE PROVISIONS

By-law establishing notice procedures

246. (1) Within one year after this section comes into force, every municipality shall pass a notice by-law specifying those by-laws for which it shall give notice to the public or to any person of passing and those by-laws for which it shall give notice to the public or to any person of council's intention to pass, or both, and the notice by-law shall set out,

- (a) the manner in which notice is to be given;
- (b) the contents of the notice to be given;
- (c) when the notice shall be given in relation to the passing of the by-law and how many times notice shall be given; and
- (d) the persons other than the public, if any, to whom the notice is to be given.

Mandatory notice

(2) If a provision of this Act, other than subsection (4), requires that notice be given of a proposed by-law or of the passing of a by-law, but the provision does not provide for one or more of the matters set out in clauses (1)(a) to (c), those matters shall be set out in the notice by-law passed under this section before the required

notice is given.

Different classes

(3) A notice by-law under this section may establish different requirements for different by-laws or classes of by-laws and any notice may be different for different persons or classes of persons.

Public meetings

(4) Before passing a by-law under subsection (1) a municipality shall give notice of its intention to pass the by-law and hold at least one public meeting to consider the by-law.

Variances from by-law

(5) The notice to be given with respect to any particular by-law may differ from the notice requirements established in the notice by-law under subsection (1) if the particular by-law,

- (a) contains a statement that the notice differs from the notice requirements set out in the notice by-law; and
- (b) contains a description of the notice, if any, to be given of the by-law.

No review

(6) The manner in which the municipality gives notice of a proposed by-law or of the passing of a by-law is not open to review by any court if the manner is consistent with the notice by-law and this section.

Consultation by-law

247. (1) Within one year after this section comes into force, every municipality shall pass a consultation by-law specifying for which of its by-laws it shall consult with the public before passing or taking any other action and the consultation by-law shall set out the manner of consultation and the persons with whom the municipality will consult.

Differing requirements

(2) A consultation by-law under this section may establish different requirements for different by-laws or classes of by-laws and the manner of consultation may be different for different persons or classes of persons.

Public meeting

(3) Before passing a by-law under subsection (1), a municipality shall give notice of its intention to pass the by-law and hold at least one public meeting to consider the by-law.

Variances from by-law

(4) The consultation to be undertaken with respect to any particular by-law may differ from the requirements established in the consultation by-law under subsection

(1) if the particular by-law,

- (a) contains a statement that the consultation differs from the requirements set out in the consultation by-law; and
- (b) contains a description of the consultation, if any, to be undertaken on the by-law.

No review

(8) The manner in which the municipality consults on a proposed by-law or on the passing of a by-law is not open to review by any court if the manner is consistent with the consultation by-law and this section.

Definitions

248. (1) In this section,

"committee" means any advisory or other committee, subcommittee or similar entity composed of members of one or more councils or local boards; ("comité")

"local board" does not include police services boards or public library boards; ("conseil local")

"meeting" means any regular, special, committee or other meeting of a council or local board. ("réunion")

Procedure by-laws respecting meetings

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings.

Outside municipality

(3) The procedure by-law may provide that meetings be held at a place outside the municipality within Ontario.

Public meeting

(4) Before passing a by-law under subsection (2) a municipality and local board shall give notice of its intention to pass the by-law and shall hold at least one public meeting to consider the by-law.

Open to public

(5) Except as provided in this section, all meetings shall be open to the public.

Improper conduct

(6) The head of council or other presiding officer may expel any person for improper conduct at a meeting.

Closed meetings

(7) A municipality or local board may in its procedure by-law authorize a

meeting to be closed if it deals with a subject matter set out in the by-law.

Same

(8) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition of land for municipal or local board purposes;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a subject matter in respect of which the municipality or local board has authorized a meeting to be closed under subsection (7);
- (h) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.

Other criteria

(9) A meeting shall be closed to the public if the subject matter relates to the consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act* if the council, board, commission or other body is the head of an institution for the purposes of that Act.

Resolution

(10) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting;
- (b) the general nature of the matter to be considered at the closed meeting; and
- (c) if clause (8) (g) authorizes the closed meeting, the subject matter in respect of which the municipality, local board or committee has authorized the meeting to be closed.

Open meeting

(11) Subject to subsection (12), a meeting shall not be closed to the public during the taking of a vote.

Exception

(12) Despite section 235, a meeting may be closed to the public during a vote if,

- (a) subsection (7), (8) or (9) permits or requires the meeting to be closed to the public; and
- (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.

SURPLUS LAND

Surplus land, definitions

249. (1) In this section,

"land" means land as defined in section 1 of the *Assessment Act*; ("bien-fonds")

"sale" includes a lease of 21 years or longer. ("vente")

By-laws respecting procedures

(2) Every municipality and local board with authority to sell land shall pass a by-law establishing procedures, including the giving of notice to the public, governing the sale of land.

Contents

(3) A by-law under subsection (2) may,

- (a) establish different procedures for different classes of land; and
- (b) incorporate a procedure for the sale of land of a municipality or local board required by this or any other Act.

Conditions

(4) Before selling any land, every municipality and local board shall,

- (a) by by-law or resolution declare the land to be surplus;
- (b) obtain at least one appraisal of the fair market value of the land; and
- (c) give notice to the public of the proposed sale.

No review

(5) The manner in which the municipality or local board carries out the sale of its land, if consistent with this section and with the by-law under subsection (2), is not open to review by any court if the municipality or local board may lawfully sell the property, the purchaser may lawfully buy it and the municipality or local board acted in good faith.

Regulations

(6) The Minister may make regulations,

- (a) prescribing classes of land for which an appraisal under clause (4) (b) or a listing in the public register under subsection (7) is not required;
- (b) removing the requirement for an appraisal under this section for land that is being sold to a public body or any class of public body specified in the regulation.

Register

(7) Every municipality and local board shall establish and maintain a public register listing and describing the land owned or leased by the municipality or local board.

Non-application

(8) Subsections (4), (6) and (7) do not apply to a sale of land under section 129.

Certificate

(9) The clerk of a municipality or the secretary of a local board may issue a certificate with respect to a sale of land by the municipality or local board verifying that to the best of his or her knowledge,

- (a) a by-law passed under subsection (2) was in force at the time the resolution or by-law required by this section was passed;
- (b) the measures required for giving notice to the public required by the by-law have been carried out; and
- (c) the appraisal required by this section was obtained or an appraisal was not required because the land was sold under section 129 or the land is exempt by regulation from the appraisal requirement.

Effect

(10) A certificate under subsection (9) shall be included in a deed or transfer of land and, unless a person to whom the land is sold has notice to the contrary, shall be deemed to be sufficient proof that this section has been complied with.

HEARINGS

Hearings

250. (1) If a council is required by law to hold a hearing or give interested parties an opportunity to be heard before doing any act, passing a by-law or making a decision, the council may delegate that responsibility to a committee of council.

Actions of council

(2) The committee shall provide its recommendations to the council after which council may pass the by-law or make the decision.

No second hearing

(3) If the committee of council holds a hearing or gives interested parties an opportunity to be heard, council is not required to do so.

Proceedings

(4) If the decision to be made by council on a matter is a statutory power of decision within the meaning of the *Statutory Powers Procedure Act*, that Act, except sections 17, 18 and 19, applies to the committee and to the hearing conducted by it.

MUNICIPAL ORGANIZATION AND ADMINISTRATION

Role of council

251. It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative practices and procedures are in place to implement the decisions of council;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act.

Role of head of council

252. It is the role of the head of council,

- (a) to preside over council meetings;
- (b) to represent the municipality at official functions; and
- (c) to carry out the duties of the head of council under this or any

other Act.

Municipal administration

253. It is the role of the municipal administration,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality.

Restriction

254. A member of council shall not be the clerk or treasurer or hold any other administrative position of the municipality.

Organizational structure

255. Within one year after this section comes into force, a municipality shall by by-law establish the organizational structure of the municipal administration.

Clerk

256. (1) A municipality shall appoint a clerk whose duty it is,

- (a) to record, without note or comment, all resolutions, decisions and other proceedings of the council;
- (b) if required by any member present at a vote, to record the name and vote of every member voting on any matter or question;
- (c) to keep the originals or copies of all by-laws and of all minutes of the proceedings of the council;
- (d) to perform the other duties required under this Act or under any other Act; and
- (e) to perform such other duties as are assigned by the municipality.

Deputy clerk

(2) A municipality may appoint a deputy clerk who has all the powers and duties of the clerk under this and any other Acts.

Not required to be an employee

(3) A clerk or deputy clerk is not required to be an employee of the municipality.

Delegation

(4) The clerk may delegate in writing to any person, other than a member of

council, any of the clerk's powers and duties under this and any other Act.

Clerk retains powers and duties

(5) The clerk may continue to exercise the delegated powers and duties, despite the delegation.

Title of clerk

(6) A municipality may give the clerk or deputy clerk titles other than clerk or deputy clerk.

JUDICIAL INVESTIGATION

Investigation by judge

257. (1) If a municipality so requests by resolution, a judge of the Ontario Court (General Division) shall,

- (a) investigate any supposed breach of trust or other misconduct of a member of council, an employee of the municipality or a person having a contract with the municipality in relation to the duties or obligations of that person to the municipality;
- (b) inquire into any matter connected with the good government of the municipality; or
- (c) inquire into the conduct of any part of the public business of the municipality, including business conducted by a commission appointed by the council or elected by the electors.

Powers

(2) In making the investigation or inquiry, the judge has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation or inquiry as if it were an inquiry under that Act.

Report

(3) The judge shall report the results of the investigation or inquiry to the council as soon as practicable.

Counsel

(4) The council may hire counsel to represent the municipality and pay fees for witnesses who are summoned to give evidence at the investigation or inquiry.

Representation by counsel

(5) Any person whose conduct is called into question in the investigation or inquiry may be represented by counsel.

Costs

(6) The judge may engage counsel and other persons to assist in the

investigation or inquiry and the costs of engaging those persons and any incidental expenses shall be paid by the municipality.

RESTRICTED ACTS AFTER POLLING DAY

Restricted acts after polling day

258. (1) The council of a municipality shall not, after voting day for the election of the new council or, if all members of council are elected by acclamation, after the day the candidates are declared elected under section 37 of the *Municipal Elections Act, 1996*,

- (a) pass any by-law, except a by-law with respect to an undertaking, work or thing that has been approved by the Ontario Municipal Board;
- (b) pass any resolution that involves the payment of money other than that provided in the budget for the current year;
- (c) enter into any contract or obligation on the part of the corporation;
- (d) appoint or dismiss from office any officer under the control of council; or
- (e) do any other corporate act unless it is one,
 - (i) that council is required by law to do;
 - (ii) that council is authorized to do by a resolution or by-law passed before the day the poll is held or the members declared elected; or
 - (iii) that is done in the case of extreme urgency.

Exception

(2) Subsection (1) does not apply if the new council that will take office after the poll or acclamation will be composed of not less than three-quarters of the members of the council as composed at the time of the poll or acclamation.

Application

(3) Subsections (1) and (2) apply to a public utilities commission whose members are elected under the *Municipal Elections Act, 1996*.

NOTES ON SOURCES OF PART IX PROVISIONS FINANCIAL ADMINISTRATION

Proposed New Policies:

Section 260 (3)
Section 261 (3) (a)
Section 263 (3) (c)
Section 264 (3) (c)
Section 265
Section 266
Section 267 (1)
Section 269 (1)
Section 270 (1) (b)
Section 270 (4), (8), (9), (11), (12)

Other Provisions:

The other provisions of Part IX are based on the following Acts:

Municipal Act
Ontario Municipal Support Grant Act

PART IX
FINANCIAL ADMINISTRATION

Financial year

259. (1) The fiscal year of a municipality and a local board of a municipality is January 1 to December 31.

Public hospitals

(2) Despite subsection (1), the fiscal year of a public hospital which is a local board of a municipality is the fiscal year of a public hospital under the *Public Hospitals Act*.

Treasurer

260. (1) A municipality shall appoint a treasurer who is responsible for handling all of the financial affairs of the municipality on behalf of and in the manner directed by the council of the municipality, including,

- (a) collecting money payable to the municipality and issuing receipts for those payments;
- (b) depositing all money received on behalf of the municipality in a financial institution designated by the municipality;
- (c) paying all debts of the municipality and other expenditures authorized by the municipality;
- (d) maintaining accurate records and accounts of the financial affairs of the municipality;
- (e) providing the council with such information with respect to the financial affairs of the municipality as it requires or requests;
- (f) ensuring investments of the municipality are made in compliance with the regulations made under section 371.

Deputy treasurer

(2) The municipality may appoint a deputy treasurer who shall have all the powers and duties of the treasurer under this and any other Act.

Not required to be an employee

(3) A treasurer or deputy treasurer is not required to be an employee of the municipality.

Liability limited

(4) The treasurer or deputy treasurer is not liable for money paid in accordance with the directions of the council of the municipality unless the disposition of the money is expressly provided for under any Act.

Bonding requirement

261. (1) A municipality may require its treasurer, deputy treasurer and any other person designated by the municipality, as a condition of acting or continuing to act on behalf of the municipality,

- (a) to be bonded in the manner and to the extent designated by the municipality; and
- (b) to provide the municipality with proof of the designated bonding at the times and in the manner the municipality requires.

Interpretation

(2) For the purposes of subsection (1), a person is bonded if there exists a bond, policy or guarantee contract of a guarantee company within the meaning of the *Guarantee Companies Securities Act* which protects the municipality in the manner and to the extent designated by the municipality if the person does not faithfully perform his or her duties.

Proof of bonding

(3) The council of a municipality shall require proof of the designated bonding to be produced for all persons who are required to be bonded under this section,

- (a) at a council meeting held not later than January 31 of each year; and
- (b) with respect to a person who is newly appointed, at the first council meeting following the appointment.

Costs

(4) The municipality shall pay the costs of the required bonding out of its general fund.

Other entities

(5) This section applies with necessary modifications to a local board and a board, body or local authority established or exercising any power or authority with respect to municipal affairs under any Act in unorganized territory, other than a school board.

Endorsement of cheques

262. (1) Every cheque issued by a municipality shall be signed by the treasurer and the head of council.

Same

(2) A municipality may designate persons to sign cheques in place of the treasurer or the head of council but the same person cannot be designated to sign in place of both of them.

Signature may be mechanically reproduced

(3) A municipality may provide that the signatures on a cheque of the municipality be mechanically or electronically reproduced.

Yearly budgets, upper-tier

263. (1) The council of an upper-tier municipality shall in each year prepare and adopt a budget including estimates of all sums required during the year for the purposes of the upper-tier municipality including,

- (a) amounts sufficient to pay all debts of the upper-tier municipality falling due within the year;
- (b) amounts required to be raised for sinking funds or retirement funds;
- (c) amounts in respect of debenture debt of lower-tier municipalities for the payment of which the upper-tier municipality is liable; and
- (d) amounts required by law to be provided by the upper-tier municipality for any of its local boards, excluding school boards.

Detail and form

(2) The budget shall set out the estimated revenues and expenditures in such detail and form as the Minister may require.

Allowance

(3) In preparing the budget, the council of the upper-tier municipality,

- (a) shall treat a surplus of any previous year as revenue that will be available during the current year;
- (b) shall provide for any operating deficit of any previous year;
- (c) shall provide for taxes which in the opinion of the treasurer are uncollectible and for which provision has not been previously made;
- (d) may provide for taxes that it is estimated will not be collected during the year; and
- (e) may provide for such reserves as the council of the upper-tier municipality considers necessary.

Application

(4) Section 34 of the *Assessment Act* and section 312 apply with necessary modifications to the upper-tier municipality.

Yearly budget from boards, etc.

(5) The council of the upper-tier municipality may by by-law require that the current year's budget of every board, commission or other body for which the council is required by law to provide money, be submitted to the council on or before March 1 in each year and that the budget shall be in such detail and form as the by-law provides.

Yearly budget, local municipalities

264. (1) The council of a local municipality shall in each year prepare and adopt a budget including estimates of all sums required during the year for the purposes of the municipality including amounts sufficient to pay all debts of the municipality falling due within the year, amounts required to be raised for sinking funds or retirement funds and amounts required for any board, commission or other body.

Detail and form

(2) The budget shall set out the estimated revenues and expenditures in such detail and form as the Minister may require.

Allowance

(3) In preparing the budget, the council of the local municipality,

- (a) shall treat a surplus of any previous year as revenue that will be available during the current year;
- (b) shall provide for any operating deficit of any previous year and for the cost of collection of, abatement of and discount on taxes;
- (c) shall provide for taxes that in the opinion of the treasurer are uncollectible and for which provision has not been previously made;
- (d) may provide for taxes that it is estimated will not be collected during the year; and
- (e) may provide for such reserves as the council of the municipality considers necessary.

Yearly budget from boards, etc.

(4) The council of the local municipality may by by-law require that the current year's budget of every board, commission or other body, other than an upper-tier municipality or school board, for which the council is required by law to levy a tax rate or provide money, be submitted to the council on or before March 1 in each year and that the budget shall be in such detail and form as the by-law provides.

Public list, licensing fees

265. (1) A municipality shall, as part of the process of adopting its budget for a year, establish and maintain a list for public inspection indicating,

- (a) the classes of business which will be subject to a business licensing

fee under Part III;

- (b) the amount of each business licensing fee to be charged to each business in the class;
- (c) the cost of administering and enforcing the licensing by-law with respect to each class of business; and
- (d) how the amount of the fee is calculated.

Amendment of list

(2) After a municipality has adopted its budget for a year, it may only amend the list when it is amending its budget.

Restriction

(3) A municipality shall not charge a fee for licensing a business under Part III in a year unless the fee appears on the list.

Special case

(4) Despite subsection (3), a municipality may charge and collect a license fee in a year before adopting its budget for the year if it appears on the list for the preceding year.

Initial fee

(5) Despite subsections (3) and (4), a municipality may, in the first year to which those subsections apply, charge a licence fee before adopting its budget for the year.

Public list, fees and charges

266. (1) A municipality shall, as part of the process of adopting its budget for a year, establish and maintain a list for public inspection indicating,

- (a) which of its services, activities and costs and the use of which property will be subject to fees or charges under Part XIII;
- (b) the actual amount of each fee or charge and how it is calculated;
- (c) an estimate of the amount each fee or charge would have to be to recover its costs related to the services, activities, costs and property, as the case may be, and how the estimated amount is calculated; and
- (d) how the municipality or local board intends to use the revenue generated by each fee or charge.

Amendment of list

(2) After a municipality has adopted its budget for a year, it may only amend the list when it is amending the budget.

Restriction

(3) A municipality shall not impose or collect a fee or charge under Part XIII in a year unless it appears on the list.

Exception

(4) Despite subsection (3), a municipality may impose and collect a fee or charge in a year before adopting its budget for the year if it appears on the list for the preceding year.

Initial fee or charge

(5) Despite subsections (3) and (4), a municipality may, in the first year to which those subsections apply, impose a fee or charge before adopting its budget for the year.

Regulations

267. (1) The Minister may make regulations,

- (a) requiring a municipality to establish a reserve fund designated for prescribed liabilities of the municipality which are incurred but not payable until later years;
- (b) defining "liabilities" of the municipality which are incurred for the purpose of clause (a);
- (c) requiring a municipality to make payments into the reserve fund to fund all or part of a prescribed liability at the prescribed times and in the prescribed manner;
- (d) prohibiting the municipality from changing the purpose for which the reserve fund is designated;
- (e) prescribing the conditions under which and the purposes for which the municipality may change the designation of all or any part of the reserve fund.

Scope

(2) A regulation under this section may be general or specific in its application and may apply to different municipalities and different liabilities differently.

Annual return

268. (1) The treasurer of a municipality shall in each year provide the Minister with a return containing information designated by the Minister with respect to the

financial affairs of the municipality, at the times and in the manner and form designated by the Minister.

Offence

(2) A contravention of subsection (1) is an offence.

Tabulation

(3) The Minister shall for each year prepare a tabulated statement of the returns received under this section for that year which shall be laid before the Legislative Assembly.

Publication of financial statements, etc.

269. (1) After receiving the audited financial statements of the municipality for the previous year, the treasurer of the municipality shall, on or before June 30 in each year, publish in a newspaper having general circulation in the municipality or mail or have delivered to each taxpayer,

- (a) a copy of the statement of revenue and expenditure, the statement of capital operations, the balance sheet, the notes to the financial statements, the auditor's report and the tax rate information for the current and previous year as contained in the financial review; or
- (b) a notice that the information described in clause (a) will be made available at no cost to any taxpayer upon request.

Copy to be provided at no cost

(2) If the treasurer receives a request from a taxpayer under clause (1) (b), he or she shall provide a copy of the information to the taxpayer at no cost.

Auditor

270. (1) A municipality shall appoint an auditor licensed under the *Public Accountancy Act* who is responsible for,

- (a) annually auditing the accounts and transactions of the municipality and its local boards;
- (b) performing duties designated by the Minister; and
- (c) performing duties required by the municipality or local board which do not conflict with the duties designated by the Minister.

Scope

(2) A duty designated by the Minister under this section may be general or specific in its application and may be restricted to the municipalities, local boards or auditors designated.

Term

(3) An auditor of a municipality shall not be appointed for a term exceeding five years.

Non-employee

(4) Despite any Act, the auditor of a municipality shall not be an employee of the municipality or of a local board of the municipality.

Reporting relationship

(5) The auditor of a municipality shall report to the council of the municipality.

Inspection

(6) The reports of the auditor provided to council under clauses (1) (a) and (b) are public records and may be inspected by any person at the clerk's office during normal office hours.

Copies

(7) A person may make copies of the reports upon payment of the fee established by the clerk which shall not exceed the lowest rate the clerk charges for copies of other documents.

Separate opinion not required

(8) An auditor is not required in any report to council to provide a separate opinion with respect to each reserve fund except a reserve fund established for the purposes of development charges under the *Development Charges Act*.

Payment of fees

(9) Where an auditor of a municipality audits a local board, the municipality shall pay the fees of the auditor and may collect the fees as a debt of the local board payable to the municipality.

Joint boards

(10) If a local board is a local board of more than one municipality, only the auditor of the municipality which is responsible for the largest share of the operating costs of the local board is required to audit the local board.

Consolidated statements

(11) Where the financial statements of a municipality and a local board are consolidated, the municipality may require the local board to be audited as if it were part of the municipality, in which case, the auditor of the municipality is not required to provide a separate opinion with respect to the statements of the local board.

No separate auditor

(12) Despite any Act, other than Part IX of the *Education Act*, a local board is not required to have its own auditor.

Unorganized territory

(13) A board, commission, body or local authority established or exercising any

power or authority with respect to municipal affairs under any Act in unorganized territory shall appoint an auditor and the provisions of this Act with respect to audits apply with necessary modifications to that board, commission, body or local authority.

Right of access, etc.

271. (1) The auditor of a municipality has right of access at all reasonable hours to all books, records, documents, accounts and vouchers of the municipality or any of its local boards.

Information

(2) The auditor may require from the members of council and local boards and from the officers of the municipality and its local boards such information and explanation as in his or her opinion is necessary to carry out the duties of the auditor.

Evidence on oath

(3) The auditor may require any person to give evidence on oath respecting any of the information and explanation under subsection (2) and for that purpose has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies as if the taking of the evidence were an inquiry under that Act.

Auditor may attend meetings

(4) The auditor may attend any meeting of members of council or any local board of the municipality and is entitled,

- (a) to receive all notices relating to the meeting that any member is entitled to receive; and
- (b) to make representations at that meeting on any matter that concerns him or her as auditor.

Default in providing information

272. The Minister of Finance may retain any money payable to a municipality if the municipality or any officer of the municipality has not provided the Minister of Municipal Affairs and Housing with any information that the municipality or officer is required to provide under this Part.

Information re: municipal operations

273. (1) In this section,

"municipality" includes a local board, a conservation authority, any board, commission or local authority exercising any power with respect to municipal purposes, excluding school purposes, in unorganized territory and any other body performing a public function designated by the Minister.

Standards

(2) A municipality shall establish objectives and standards with respect to any matter designated by the Minister related to the efficiency and effectiveness of the municipality's operation.

Information to be provided

(3) A municipality shall provide the Minister with information designated by the Minister which, in the Minister's opinion, relate to the efficiency and effectiveness of the municipality's operations, at the times and in the manner and form designated by the Minister.

Publication

(4) A municipality shall publish all or such portion of the information as may be designated by the Minister at the times and in the manner and form designated by the Minister.

Review

(5) A municipality shall,

- (a) cause to be reviewed or audited all of the information, or such portion of it as may be designated by the Minister, at the times and in the manner and form designated; and
- (b) make available all of the information, or such portion of it as may be designated by the Minister, to be reviewed or audited at the times, by the persons and in the manner and form designated.

Scope

(6) A matter designated by the Minister under this section may be general or specific in its application and may be restricted to those municipalities or persons designated.

Financial assistance

274. (1) In this section and section 275,

"municipality" includes,

- (a) a local board, including a school board and a conservation authority;
- (b) a band as defined in the *Indian Act* (Canada);
- (c) a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in unorganized territory; and
- (d) any other body performing a public function prescribed by the Minister.

Grants and loans

(2) The Minister may, upon such conditions as may be considered advisable, make grants and loans and provide other financial assistance to a municipality.

Regulations

(3) The Minister may make regulations providing that other bodies performing a public function are municipalities for the purpose of this section.

Standards for activities

275. (1) Upon the recommendation of the Minister, the Lieutenant Governor in Council may, if of the opinion that a matter is of provincial significance, make regulations,

- (a) establishing standards for activities of municipalities including the provision of services; and
- (b) requiring municipalities to comply with the standards when carrying out the activity.

Scope

(2) A regulation under this section may be general or specific in its application and may be restricted to those municipalities specified in the regulation.

Failure to comply

(3) If, in the opinion of the Minister, a municipality fails to comply with a standard established under this section, the Minister may, by order,

- (a) reduce a grant, loan or other financial assistance that the Minister would otherwise have provided to the municipality under this Act;
- (b) require the municipality to pay to the Minister an amount not exceeding the total value of grants, loans and other financial assistance provided under this Act to the municipality in the year the municipality failed to comply with the standard;
- (c) if a grant, loan or other financial assistance previously provided by the Minister to the municipality under this Act was made subject to conditions, amend the conditions and impose additional conditions; and
- (d) if a grant, loan or other financial assistance previously provided by the Minister to the municipality under this Act was not made subject to conditions, impose conditions.

Use of money

(4) The Minister shall use the money received from a municipality under clause (3) (b) to remedy the municipality's failure to comply with the standard but, if the

Ministry does not use the money for that purpose, the Minister shall pay the money to the Minister of Finance.

References to Minister

(5) All references to the Minister in this section are references to the Minister of Municipal Affairs and Housing except in subsection (1) and in the first reference to Minister in subsection (3) where the references shall be deemed to be references to the Solicitor General and Minister of Correctional Services if recommendations or opinions are being made or given with respect to police or fire services.

NOTES ON SOURCES OF PART X PROVISIONS MUNICIPAL TAXATION

Proposed New Policies:

Section 281 (7)
Section 288 (2) & (10)
Sections 295 to 298

Other Provisions:

The other provisions of Part X are based on the following Acts:

Municipal Act, as amended by the Fair Municipal Finance Act, 1997 (Parts I & 2)
Municipal Boundary Negotiations Act
Public Utilities Act
Regional Municipalities Act
12 Regional Acts

PART X
MUNICIPAL TAXATION

MUNICIPAL TAXES

Definitions

276. In this Part,

"assessment" means the assessment for real property made under the *Assessment Act* according to the last returned assessment roll; ("évaluation")

"commercial property class" means the commercial property class prescribed under the *Assessment Act*; ("catégorie des biens commerciaux")

"payment in lieu of taxes" means an amount referred to in subparagraph ii of paragraph 24 of subsection 3 (1) of the *Assessment Act* or an amount that a local municipality receives under,

- (a) subsection 27 (3) or section 27.1 of the *Assessment Act*,
- (b) section 293 and subsection 294 (4) of this Act,
- (c) section 4 of the *Municipal Tax Assistance Act*,
- (d) section 71 of the *Ontario Water Resources Act*,
- (e) section 52 of the *Power Corporation Act*,
- (f) section 10 or 11 of the *Trees Act*,
- (g) the *Municipal Grants Act* (Canada), or
- (h) any Act of Ontario or of Canada or any agreement where the payment is from any government or government agency and is in lieu of taxes on real property, but not including a payment referred to in section 321; ("paiement tenant lieu d'impôts")

"property class" means a class of real property prescribed under the *Assessment Act*; ("catégorie de biens")

"residential/farm property class" means the residential/farm property class prescribed under the *Assessment Act*; ("catégorie des biens résidentiels/agricoles")

"tax rate" means the tax rate to be levied against property expressed as a percentage, to six decimal places, of the assessment of the property. ("taux d'imposition", "taux de l'impôt")

Taxes to be levied equally

277. (1) All taxes shall, unless expressly provided otherwise, be levied upon the whole of the assessment for real property or other assessments made under the *Assessment Act* according to the amounts assessed and not upon one or more kinds of property or assessment or in different proportions.

Tax ratios

(2) If, in this or any other Act or any by-law passed under any Act, taxes, fees or charges are expressly or in effect directed or authorized to be levied upon rateable property of a municipality for municipal purposes then, unless other express provisions are made, such taxes, fees or charges shall be calculated as percentages of the assessment for real property in each property class and the tax rates shall be in the same proportion to each other as the tax ratios established under section 278 for the property classes are to each other.

Deemed imposition

(3) Taxes imposed for a year shall be deemed to have been imposed and to be due on January 1 of the year unless the by-law imposing the tax provides otherwise.

Establishment of tax ratios

278. (1) A set of tax ratios for every municipality shall be established in accordance with this section.

What tax ratios are

(2) The tax ratios are the ratios that the tax rate for each property class must be to the tax rate for the residential/farm property class where the residential/farm property class tax ratio is 1.

Single-tier municipalities

(3) A single-tier municipality shall pass a by-law on or before March 15 in each year to establish the tax ratios for that year for the municipality.

Tiered municipalities

(4) An upper-tier municipality shall pass a by-law on or before March 15 in each year to establish the tax ratios for that year for the upper-tier municipality and its lower-tier municipalities.

Tiered municipalities, ratios are uniform

(5) A by-law under subsection (4) must establish, for each property class, a single tax ratio for the upper-tier municipality and its lower-tier municipalities.

Ratios within prescribed ranges

(6) The tax ratio for a property class must be within the allowable range prescribed in the regulations for the property class.

Exception

(7) Despite subsection (6), the tax ratio for a property class for a municipality may be outside the allowable range in the following circumstances:

1. For the first year for which the property class is prescribed under the *Assessment Act*, the tax ratio may be,
 - i. above the range if it is less than or equal to the prescribed transition ratio for the property class for the municipality, or
 - ii. below the range if it is greater than or equal to the prescribed transition ratio for the property class for the municipality.
2. For a subsequent year the tax ratio may be,
 - i. above the range if it is less than or equal to the tax ratio for the property class for the previous year, or
 - ii. below the range if it is greater than or equal to the tax ratio for the property class for the previous year.

Regulations

(8) The Minister may make regulations,

- (a) extending the time limit in subsection (3) or (4);
- (b) requiring municipalities to provide the Minister with the information prescribed in the regulations at the times, and in the manner, prescribed in the regulations;
- (c) requiring municipalities that pass by-laws under this section or that otherwise establish tax ratios under regulations under this section to give notice of the tax ratios to such persons and in such manner as the regulations prescribe.

Regulations extending time

(9) A regulation under clause (8) (a) extending a time limit may be made even if the time limit has expired.

Regulations, Minister of Finance

(10) The Minister of Finance may make regulations,

- (a) prescribing, for the purposes of subsection (6), the allowable ranges for the tax ratios for the property classes;
- (b) prescribing transition ratios for the property classes for the purposes of subsection (7) or prescribing a method for determining such ratios;
- (c) designating a group of municipalities specified in the regulations,

each one of which is a municipality whose council is required under subsection (3) or (4) to pass a by-law establishing tax ratios for a year, and requiring each such municipality, despite subsections (6) and (7), to establish, as the tax ratio for the year for each property class specified in the regulations, the ratio specified in the regulations for the property class.

Regulation upon request of municipality

(11) A regulation under clause (10) (c) may not be made unless, before the regulation is made, the council of each municipality to be specified in the regulation passes a resolution requesting that the regulation be made, specifying the property classes to which the regulation is to apply and specifying what the tax ratio for each such class shall be.

Regulations can be specific

(12) A regulation under this section may be general or particular in its application and may be limited to specific municipalities.

Regulations can be retroactive

(13) A regulation under subsection (10) may be retroactive to a date not earlier than January 1 of the year in which the regulation was made.

Farmlands, managed forests property classes

(14) Despite anything in this section, the tax ratios for the farmlands property class and the managed forests property class prescribed under the *Assessment Act* shall be .25 for all municipalities.

Restructured municipalities, definitions

279. (1) In this section,

"municipal restructuring" means,

- (a) the incorporation of a new municipality,
- (b) the amalgamation of municipalities,
- (c) the alteration of the boundaries of a municipality, or
- (d) the dissolution of an upper-tier municipality; ("restructuring municipale")

"restructured municipality" means, in relation to a municipal restructuring,

- (a) the municipality that is incorporated,
- (b) the municipality that results from the amalgamation,

- (c) the municipality whose boundaries are altered, or
- (d) a municipality that formed part, for municipal purposes, of the upper-tier municipality that is dissolved. ("municipalité issue d'une restructuration")

Municipal restructuring, new transition ratios

(2) To facilitate a municipal restructuring, the Minister of Finance may make regulations prescribing transition ratios for a restructured municipality the council of which is required to pass a by-law under this section to establish tax ratios.

Replacement transition ratios

(3) The Minister of Finance may make regulations prescribing transition ratios for a municipality the council of which is required to pass a by-law under this section to establish tax ratios if, as a result of an error or of an event that occurs after the original transition ratios are prescribed, the application of the original transition ratios would result, in the opinion of the Minister, in a significant shift in taxation among classes of real property in the municipality.

Effect

(4) If transition ratios for a municipality are prescribed under subsection (2) or (3), paragraph 1 of subsection 278 (7) applies, with necessary modifications, for the year with respect to which the new transition ratios apply.

Delegation to lower-tiers

280. (1) The council of an upper-tier municipality may, by by-law passed before January 15 of a year, delegate to the council of each of its lower-tier municipalities the authority to pass a by-law establishing the tax ratios for the year within the lower-tier municipality for both lower-tier and upper-tier purposes.

By-law must apportion upper-tier levies

(2) A by-law under subsection (1) must set out the portion of the general upper-tier levy and any special upper-tier levy that will be raised in each lower-tier municipality or a method by which the portion can be determined.

Lower-tiers must consent

(3) A by-law under subsection (1) establishing tax ratios for a year is not in force unless, before January 15 of the year, the council of every lower-tier municipality that is part of the upper-tier municipality passes a resolution consenting to the by-law.

Upper-tier must be designated by regulation

(4) A by-law under subsection (1) establishing tax ratios for a year does not come into force unless a regulation is made, before March 1 of the year, designating the upper-tier municipality for the purposes of this section.

Limitation on amendment, revocation

(5) A by-law under subsection (1) establishing tax ratios for a year may not be amended or repealed on or after January 15 of the year.

Delegated authority is exclusive

(6) The council of a lower-tier municipality that has been delegated authority to pass a by-law establishing the tax ratios for a year within the municipality has the exclusive authority to pass such a by-law for the year.

When tax ratios must be established

(7) If a council has been delegated the authority to pass a by-law establishing the tax ratios for a year, the council shall do so on or before March 15 of the year.

Application

(8) Subsections 278 (6) to (13) apply with necessary modifications with respect to a by-law made under a delegation under subsection (1).

Single set of tax ratios

(9) The tax ratios established by the council of a municipality must be the same for both upper-tier and lower-tier purposes.

Regulations

(10) The Minister may make regulations,

- (a) designating an upper-tier municipality for the purposes of this section;
- (b) prescribing conditions that must be satisfied before the council of an upper-tier municipality may make a delegation under subsection (1);
- (c) extending the time limit in subsections (1), (3), (4), (5) and (7);
- (d) governing the requisitions or levies that may be made by the council of an upper-tier municipality that has made a delegation under subsection (1) or that may be made by any other body;
- (e) doing any of the following that, in the opinion of the Minister, are necessary or desirable as a result of a delegation being made under subsection (1) or as a result of a delegation under subsection (1) not being made in the year following a year in which such a delegation was made,
 - (i) varying the application of this or any other Act,
 - (ii) prescribing provisions to operate in place of any part of this or any other Act,
 - (iii) prescribing provisions to operate in addition to this or any other Act.

Regulations extending time

(11) A regulation under clause (10) (c) extending a time limit may be made even if the time limit has expired.

Regulations can be specific

(12) A regulation under this section may be general or particular in its application and may be limited to specific municipalities.

Regulations can be retroactive

(13) A regulation under this section may be retroactive to a date not earlier than January 1 of the year in which the regulation was made.

General upper-tier levy, etc.

281. (1) In this section,

"general upper-tier levy" means the amount an upper-tier municipality determines to be raised on all the rateable property in the upper-tier municipality not exceeding the estimated expenditures adopted for the year under section 263; ("impôt général de palier supérieur")

"special upper-tier levy" means an amount to be raised on less than all the rateable property in the upper-tier municipality. ("impôt extraordinaire de palier supérieur")

General rating by-law

(2) For purposes of raising the general upper-tier levy, the council of an upper-tier municipality, on or before March 31 in each year, shall pass a by-law directing the council of each lower-tier municipality to levy a separate tax rate, as specified in the by-law, on the assessment in each property class in the lower-tier municipality rateable for upper-tier purposes.

Special levies

(3) For purposes of raising a special upper-tier levy, the council of an upper-tier municipality shall, on or before March 31 in each year, pass a by-law directing the council of each applicable lower-tier municipality to levy a separate tax rate, as specified in the by-law, on all or part of the assessment, as specified in the by-law, in each property class in the lower-tier municipality rateable for upper-tier purposes.

Restrictions on rates

(4) The tax rates that the council of an upper-tier municipality shall direct to be levied in an upper-tier rating by-law are subject to the following restrictions:

1. The rates must be set so that, when they are levied on the applicable assessment rateable for upper-tier purposes, an amount equal to the general upper-tier levy or special upper-tier levy, as the case may be, is raised.
2. The rates on the different classes of property must be in the same

proportion to each other as the tax ratios established under section 278 for the property classes are to each other.

3. The rate for each class of property must be the same for each lower-tier municipality.

Rates adopted

(5) In each year, the council of each lower-tier municipality shall levy, in accordance with the upper-tier rating by-law passed for that year, the tax rates specified in the by-law.

Estimate of amount to be raised

(6) An upper-tier rating by-law shall estimate the amount to be raised in a lower-tier municipality as a result of a levy being made in that municipality in accordance with the by-law.

Instalments

(7) An upper-tier rating by-law shall provide that the amount to be raised by each lower-tier municipality shall be paid to the upper-tier municipality in the following instalments:

1. 25 per cent of the amount required for upper-tier purposes in the previous year, on or before March 31.
2. 50 per cent of the amount required for upper-tier purposes in the current year, less the amount of the instalment paid under paragraph 1, on or before June 30.
3. 25 per cent of such current amount, on or before September 30.
4. The balance of the entitlement for the year, on or before December 15.

Variation by agreement

(8) Despite subsection (7), the council of an upper-tier municipality may, by agreement with a majority of the lower-tier municipalities in the upper-tier municipality representing at least two-thirds of the total weighted assessment of all the lower-tier municipalities in the upper-tier municipality, provide by by-law for any number of instalments and their due dates other than those provided in subsection (7) and those alternative instalments and due dates shall be applicable to all the lower-tier municipalities in the upper-tier municipality.

Definition

(9) For the purposes of subsection (8),

"weighted assessment" means the assessment for a property multiplied by the tax ratio, established under section 278, for the property class the property is in.

Interest on advance payments

(10) An upper-tier rating by-law may provide that the upper-tier municipality shall pay interest at a rate to be determined by the council of the upper-tier municipality on any payment, or portion of such a payment, made in advance by a lower-tier municipality.

Payment

(11) The amount levied by a lower-tier municipality pursuant to an upper-tier rating by-law shall be deemed to be taxes and is a debt of the lower-tier municipality to the upper-tier municipality and the treasurer of the lower-tier municipality shall pay the amount owing by the lower-tier municipality to the treasurer of the upper-tier municipality on or before the dates and in the portions specified in the upper-tier rating by-law.

Default

(12) If a lower-tier municipality fails to make any payment, or portion of it, as provided in the upper-tier rating by-law, the lower-tier municipality shall pay to the upper-tier municipality interest on the amount in default at the rate of 15 per cent per year, or such lower rate as the upper-tier municipality may by by-law determine, from the date payment is due until it is made.

Amount payable, adjustments if estimate incorrect

(13) If the amount levied by a lower-tier municipality pursuant to an upper-tier rating by-law is different from the amount estimated in the by-law the lower-tier municipality is required to pay only the amount levied and the appropriate adjustments shall be made in respect of any amounts already paid.

Regulation extending time

(14) The Minister may make regulations extending the time for passing an upper-tier rating by-law in any year.

Scope of regulation

(15) A regulation under subsection (14),

- (a) may be made even if the time limit set out in subsection (2) or (3) has expired; and
- (b) may be general or specific in its application and may be restricted to an upper-tier municipality.

Percentages for instalments, 1998

(16) The Minister may make regulations prescribing percentages to apply, instead of the percentages in paragraphs 1, 2 and 3 of subsection (7), for the 1998 taxation year.

Scope of regulation

(17) A regulation under subsection (16) may be general or specific in its application and may be restricted to an upper-tier municipality.

General local municipality levy, etc.

282. (1) In this section,

"general local municipality levy" means the amount a local municipality determines to be raised on all rateable property in the local municipality not exceeding the estimated expenditures adopted for the year under section 264 less amounts to be raised for upper-tier or school purposes; ("impôt général local")

"special local municipality levy" means an amount to be raised on less than all the rateable property in the local municipality. ("impôt extraordinaire local")

General local municipality levies

(2) For purposes of raising the general local municipality levy, the council of a local municipality shall, each year, pass a by-law levying a separate tax rate, as specified in the by-law, on the assessment in each property class in the local municipality rateable for local municipality purposes.

Special local municipality levies

(3) For purposes of raising a special local municipality levy, the council of a local municipality shall, each year, pass a by-law levying a separate tax rate, as specified in the by-law, on all or part of the assessment, as specified in the by-law, in each property class in the local municipality rateable for local municipality purposes.

Restrictions on rates

(4) The tax rates to be levied under subsection (2) or (3) are subject to the following restrictions:

1. The rates must be set so that, when they are levied on the applicable assessment rateable for local municipality purposes, an amount equal to the general local municipality levy or special local municipality levy, as the case may be, is raised.
2. The rates on the different classes of property must be in the same proportion to each other as the tax ratios established under section 278 for the property classes are to each other.

Prescribed subclass tax reductions

283. (1) The tax rates that would otherwise be levied for municipal purposes for the subclasses prescribed under subsection 8 (1) of the *Assessment Act* shall be reduced in accordance with the following rules:

1. The tax rates that would otherwise be levied for municipal purposes for the subclasses prescribed under paragraph 1 of subsection 8 (1) of the *Assessment Act* shall be reduced by the prescribed percentages.
2. The tax rates that would otherwise be levied for municipal

purposes for the subclass prescribed under subparagraph i of paragraph 2 of subsection 8 (1) of the *Assessment Act* shall be reduced by 30 per cent or by the percentage, if any, under subsection (4).

3. The tax rates that would otherwise be levied for municipal purposes for the subclass prescribed under subparagraph ii of paragraph 2 of subsection 8 (1) of the *Assessment Act* shall be reduced by 35 per cent or by the percentage, if any, under subsection (4).
4. The tax rates that would otherwise be levied for municipal purposes for the subclass prescribed under subparagraph i of paragraph 3 of subsection 8 (1) of the *Assessment Act* shall be reduced by 30 per cent or by the percentage, if any, under subsection (4).
5. The tax rates that would otherwise be levied for municipal purposes for the subclass prescribed under subparagraph ii of paragraph 3 of subsection 8 (1) of the *Assessment Act* shall be reduced by 35 per cent or by the percentage, if any, under subsection (4).

Same

(2) The Minister of Finance may make regulations,

- (a) prescribing percentages for the purposes of paragraph 1 of subsection (1); and
- (b) requiring percentage reductions of the tax rates for municipal purposes for any subclasses prescribed under subsection 8 (2) of the *Assessment Act*.

Choice of percentage within range

(3) If the regulations made under subsection (2) require tax rates to be reduced by a percentage within a range described in the regulations,

- (a) the percentage shall be specified, by by-law, by the council of the local municipality or, if the local municipality is a lower-tier municipality, by the council of the upper-tier municipality; and
- (b) if no percentage is specified under clause (a), the percentage shall be the highest percentage in the range.

Municipal option for certain paragraphs

(4) The council of a municipality, other than a lower-tier municipality, may pass a by-law providing for a single percentage that is not less than 30 per cent and not more than 35 percent to apply instead of the percentages set out in paragraphs 2 to 5 of

subsection (1).

Overlap with graduated tax rates

(5) The Minister of Finance may make regulations governing the application of this section and section 284 and regulations or by-laws made under those sections in situations in which both of those sections, or the regulations or by-laws made under them, apply.

Graduated tax rates for commercial property

284. (1) A municipality, other than a lower-tier municipality may establish two or three bands of the assessment of commercial property for the purposes of facilitating graduated tax rates for the commercial property class.

Restrictions on bands

(2) The bands are subject to the following:

1. The lowest band must be the portion of the assessment of a property that is less than or equal to an amount set out in the by-law.
2. The highest band must be the portion of the assessment of a property that is greater than an amount set out in the by-law.
3. If there is a third band it must cover the portion of the assessment between the lowest and highest bands.
4. The bands must be established so that they cover all of the assessment of a property and do not overlap.
5. The bands must be the same for all properties.

Regulations, graduated tax rates

(3) The Minister of Finance may make regulations providing for graduated tax rates for the commercial property class which shall consist of a tax rate for each of the bands established under subsection (1).

Graduated tax rates

(4) The taxes on a property shall be determined by applying the tax rate for each band to the portion of the assessment of the property within that band.

Regulation-making power

(5) The following apply with respect to regulations under subsection (3):

1. The regulations may govern the determination of the tax rates.
2. The regulations may provide for the determination of any matter by the council of the municipality. In the case of an upper-tier municipality and its lower-tier municipalities, the regulations may

provide for the determination of any matter by the council of the upper-tier municipality or by the councils of the lower-tier municipalities.

Taxation of certain railway, power utility lands

285. (1) Every local municipality shall impose taxes, in accordance with the regulations, on the following land:

1. The roadway or right of way of a railway company and railyards of a railway company other than the structures, substructures and superstructures, rails, ties, poles and other property on the roadway or right of way, not including land leased by the railway company to another person for rent or other valuable consideration.
2. Land owned by a power utility prescribed by the Minister of Finance, other than a public utility defined in subsection 27 (1) of the *Assessment Act*, and used as a transmission or distribution corridor, not including land leased by the power utility to another person for rent or other valuable consideration.

Distribution of the tax

(2) Part of the taxes imposed by a local municipality on land described in subsection (1) shall be distributed to the upper-tier municipality, if any.

Amount of share

(3) The upper-tier municipality's share of tax under this section shall be determined in accordance with the following:

$$\text{Share of tax} = \text{Tax under this section} \times \frac{\text{Upper-tier commercial tax}}{\text{Total commercial tax}}$$

Where,

"Total commercial tax" means the total tax levied on land in the commercial property class, for upper-tier and lower tier purposes, in the local municipality;

"Upper-tier commercial tax" means the tax levied on land in the commercial property class, for upper-tier purposes, in the local municipality.

Regulations

(4) The Minister of Finance may make regulations,

- (a) prescribing, for each geographic area described in subsection (6), the rate of tax to be imposed by a local municipality on the land described in subsection (1);
- (b) prescribing power utilities for the purposes of paragraph 2 of subsection (1);

- (c) governing when the distribution under subsection (2) shall be made.

Same

(5) The following apply to regulations under subsection (4):

1. The regulations may provide for land described in paragraph 1 of subsection (1) to be taxed differently from land described in paragraph 2 of subsection (1).
2. A regulation may be general or specific in its application.

Geographic areas

(6) For the purposes of this section, Ontario is divided into the following geographic areas:

1. The City of Toronto and the regional municipalities of Durham, Halton, Peel and York.
2. The Regional Municipality of Ottawa-Carleton and the counties of Lanark, Leeds and Grenville, Prescott and Russell, Renfrew, and Stormont, Dundas and Glengarry, including the separated municipalities situated in those counties.
3. The counties of Frontenac, Haliburton, Hastings, Lennox and Addington, Northumberland, Peterborough, Prince Edward and Victoria, including the separated municipalities situated in those counties.
4. The regional municipalities of Hamilton-Wentworth, Niagara and Waterloo.
5. The Regional Municipality of Haldimand-Norfolk, the County of Oxford and the counties of Brant, Elgin, Essex, Kent, Lambton and Middlesex, including the separated municipalities situated in those counties.
6. The counties of Bruce, Dufferin, Grey, Huron, Perth, Simcoe and Wellington, including the separated municipalities situated in these counties.
7. The Regional Municipality of Sudbury and the districts of Algoma, Manitoulin and Sudbury.
8. The District Municipality of Muskoka and the districts of Cochrane, Nipissing, Parry Sound and Temiskaming.
9. The districts of Kenora, Rainy River, and Thunder Bay.

References to municipalities and districts

(7) In the description of a geographic area in subsection (6), a reference to a municipality or district is a reference to the municipality or district as it was on December 31, 1997 except for the reference to the City of Toronto which is a reference to the City of Toronto as it was on January 1, 1998.

Tax roll

(8) The treasurer of a municipality shall, for land described in subsection (1), enter on the tax roll the number of acres or other measure showing the extent of the land and the amounts of the taxes under this section.

Amount to be distributed is a debt

(9) An amount that a local municipality is required to distribute to an upper-tier municipality is a debt of the local municipality to the upper-tier municipality.

Default

(10) If a lower-tier municipality fails to make any payment, or portion of it, to an upper-tier municipality as required under this section, the lower-tier municipality shall pay to the upper-tier municipality interest on the amount in default at the rate of 15 per cent per year, or such lower rate as the upper-tier municipality may by by-law determine, from the date payment is due until it is made.

Interest on advance payments

(11) An upper-tier municipality may, by by-law, provide that the upper-tier municipality shall pay interest at a rate to be determined by the council of the upper-tier municipality on any payment under this section, or portion of such a payment, made in advance by a local municipality.

Transitional taxation

(12) The Minister of Finance may make regulations providing for the taxation under this section for the taxation years 1998 to 2005, both inclusive, of land that the owner owned on December 31, 1997, for the purposes of providing for the transition from the taxation of such land as it was taxed in 1997.

Same

(13) The following apply to regulations under subsection (12):

1. The regulations may provide for land described in paragraph 1 of subsection (1) to be taxed differently from land described in paragraph 2 of subsection (1).
2. A regulation may be general or specific in its application.
3. The regulations may provide for different taxation of particular parcels of land or of parcels of land owned by particular owners.

Interim levy, local municipality

286. (1) For 1999 and subsequent years, the council of a local municipality,

before the adoption of the budget for the year, may pass a by-law levying a separate tax rate, as specified in the by-law, on the assessment in each property class in the local municipality rateable for local municipality purposes.

By-law

(2) A by-law for levying tax rates under subsection (1) shall be passed in the year that the rates are to be levied or may be passed in December of the previous year if it provides that it does not come into force until a specified day in the following year.

Added assessment

(3) A by-law under subsection (1) may provide for the levying of tax rates on the assessment of property that is added to the assessment roll after the by-law is passed.

Restrictions on rates

(4) The tax rates to be levied under subsection (1) are subject to the following restrictions:

1. The rate on a property class must be set so that the total amount raised, when the tax rate is levied on the applicable assessment rateable for local municipality purposes, does not exceed 50 per cent of the total amount raised for all purposes in the previous year by the levying of tax rates on all the properties that, in the current year, are in the property class.
2. The rates must be set so that the amount raised does not exceed any limit in a regulation under section 287.
3. The rates on the different classes of property must be in the same proportion to each other as the tax ratios established under section 278 for the property classes are to each other.
4. For the purpose of calculating the total amount raised for all purposes in the previous year under paragraph 1, if any tax rates were levied in the previous year for only part of the year because assessment was added to the assessment roll during the year, an amount shall be added equal to the additional taxes that would have been levied if the tax rates had been levied for the entire year.

Assessment roll

(5) If a by-law is passed under subsection (1) before the assessment roll for taxation in the current year is returned, the tax rate levied under subsection (1) shall be levied on the assessment according to the assessment roll for taxation in the previous year as most recently revised before the by-law is passed or a preliminary assessment roll provided by the assessment commissioner for the purpose.

Tax ratios

(6) If a by-law is passed under subsection (1) before the tax ratios for the current year are established, the reference to tax ratios in paragraph 3 of subsection (3) shall be deemed to be a reference to the tax ratios for the previous year.

Relief for excessive tax rates

(7) If the council of a municipality is of the opinion that in any year the tax rates levied under subsection (1) on a property would be excessive in relation to its estimate of the total tax rates that will be levied on the property in that year, the council may reduce the tax rates levied on the property under subsection (1) to the extent it considers appropriate.

Deduction

(8) An amount levied under subsection (1) on a property in a year shall be deducted from the amounts levied on the property for the year under sections 281 and 282.

Refund

(9) If the amount levied under subsection (1) on a property exceeds the amounts levied on the property for the year under sections 281 and 282, the treasurer of the local municipality shall refund that excess amount not later than 21 days after giving a notice of demand of taxes payable for the year.

Application after municipal restructuring

(10) If as a result of a municipal restructuring parts of a local municipality as it exists on January 1 of a year were, at any time in the preceding year, in different local municipalities or were, at any time in the preceding year, territory without municipal organization, this section applies for the purposes of the current year with respect to each such area as though it were a separate municipality.

Regulations to vary interim powers

287. (1) The Minister may make regulations with respect to a taxation year for the purposes of paragraph 2 of subsection 286 (4), establishing the maximum amount that can be requisitioned by a local municipality on an interim basis.

Regulations can be specific

(2) A regulation under this section may be general or specific in its application and may be restricted to the municipalities designated.

Restriction for taxation years after 1998

(3) The Minister may make a regulation with respect to a taxation year after 1998 only if the day or one of the days as of which current value is determined for the purposes of assessment for the taxation year is different from the corresponding day or days for the previous taxation year.

Retroactive

(4) A regulation under this section may be retroactive to a date not earlier than December 1 of the year before the year in which the regulation is made.

Phase-in of 1998 assessment-related changes

288. (1) In 1998, the council of a municipality, other than a lower-tier municipality, may pass a by-law to phase-in a 1998 assessment-related tax increase or decrease as determined under subsection (2).

Definition

(2) In this section,

"1998 assessment-related tax increase or decrease" means the total of the upper-tier amount, the lower-tier amount and the school amount for a property calculated in accordance with the following formulae, subject to subsection (3):

$$\text{Upper-tier Amount} = \frac{1997 \text{ Upper-tier Taxes (class)}}{1998 \text{ Assessment (class)}} \times 1998 \text{ Assessment (property)} - 1997 \text{ Upper-tier Taxes (property)}$$

$$\text{Lower-tier Amount} = \frac{1997 \text{ Lower-tier Taxes (class)}}{1998 \text{ Assessment (class)}} \times 1998 \text{ Assessment (property)} - 1997 \text{ Lower-tier Taxes (property)}$$

$$\text{School Amount} = \frac{1997 \text{ School Taxes (class)}}{1998 \text{ Assessment (class)}} \times 1998 \text{ Assessment (property)} - 1997 \text{ School Taxes (property)}$$

Where,

"1997 Upper-tier Taxes (class)" means the total 1997 taxes for upper-tier purposes on land in the municipality that is in the property class that the property is in, including business taxes imposed on persons carrying on a business on such land,

"1997 Lower-tier Taxes (class)" means the total 1997 taxes for lower-tier purposes on land in the municipality that is in the property class that the property is in, including business taxes imposed on persons carrying on a business on such land,

"1997 School Taxes (class)" means the total 1997 taxes for school purposes on land in the municipality that is in the property class that the property is in, including business taxes imposed on persons carrying on a business on such land,

"1998 Assessment (class)" means the total assessment for 1998 of the land in the municipality that is in the property class that the property is in and that is rateable for municipal purposes,

"1998 Assessment (property)" means the assessment of the property for 1998,

"1997 Upper-tier Taxes (property)" means the 1997 taxes for upper-tier purposes on

the property, including business taxes imposed on persons carrying on a business on the property,

"1997 Lower-tier Taxes (property)" means the 1997 taxes for lower-tier purposes on the property, including business taxes imposed on persons carrying on a business on the property;

"1997 School Taxes (property)" means the 1997 taxes for school purposes on the property, including business taxes imposed on persons carrying on a business on the property.

Same

(3) The determination of the 1998 assessment-related tax increase or decrease for a property is subject to the following:

1. The 1998 assessment-related tax increase or decrease for a property in the farmlands property class or the managed forests property class prescribed under the *Assessment Act* is 25 percent of the amount determined using the formulae in subsection (2).
2. This paragraph applies with respect to a bridge or tunnel that crosses a river forming the boundary between Ontario and the United States. The 1998 assessment-related tax increase or decrease for land used for the purposes of the bridge or tunnel is the 1998 taxes on the land minus the 1997 taxes on the land for municipal and school purposes. In this paragraph, "land used for the purposes of the bridge or tunnel" includes land at the end of the bridge or tunnel used in connection with the bridge or tunnel, including duty-free stores.
3. If a new improvement to a property is reflected in the assessment used to determine the 1998 taxes but was not reflected in the assessment used to determine the 1997 taxes, the 1998 Assessment (property) shall be adjusted, in calculating the amount under subsection (2), to what it would be if the improvement was not reflected in the assessment for 1998.
4. If an improvement to a property was reflected in the assessment used to determine the 1997 taxes and, because of a change related to the improvement, the improvement is not reflected in the assessment used to determine the 1998 taxes, the 1998 Assessment (property) shall be adjusted, in calculating the amount under subsection (2), to what it would be if the improvement was reflected in the assessment for 1998.

Application to lower-tiers

(4) A by-law under subsection (1) of an upper-tier municipality also applies with respect to the taxes of its lower-tier municipalities.

By-law requirements

(5) A by-law under subsection (1) is subject to the following:

1. The first year in which a 1998 assessment-related tax increase or decrease is phased-in must be the 1998 taxation year and the last year must be the 2005 taxation year or an earlier taxation year.
2. If the by-law is phasing in a 1998 assessment-related tax increase, the following adjustments shall be made to taxes for a property for a taxation year,
 - i. the 1998 assessment-related tax increase shall be subtracted from the taxes,
 - ii. the amounts phased-in in each of the previous years shall be added to the taxes, and
 - iii. the amount to be phased-in in the current taxation year shall be added to the taxes.
3. If the by-law is phasing in a 1998 assessment-related tax decrease, the following adjustments shall be made to taxes for a property for a taxation year,
 - i. the 1998 assessment-related tax decrease shall be added to the taxes,
 - ii. the amounts phased-in in each of the previous years shall be subtracted from the taxes, and
 - iii. the amount to be phased-in in the current taxation year shall be subtracted from the taxes.
4. The amount to be phased-in in a year, other than 1998, must be the same or less than the amount phased-in in the previous year.
5. The amount phased-in in the last year in which an 1998 assessment-related tax increase or decrease is phased-in plus the total of the amounts phased-in in the previous years must equal the 1998 assessment-related tax increase or decrease.
6. The by-law must set out, for each property with respect to which the by-law applies, the 1998 assessment-related tax increase or decrease.
7. The by-law may provide for different phase-ins for different property classes and it may provide for no phase-in for some classes.

8. For each property class for each year, the adjustments made under the by-law must not affect the total taxes for municipal and school purposes on the land in the municipality that is in the property class and that is rateable for municipal purposes. For the purposes of this paragraph, the residential/farm property class, the farmlands property class and the managed forests property class prescribed under the *Assessment Act* shall be deemed to be a single property class.

If change in use, character, classification of land

(6) If there has been a change in the use or character of any land or in its classification under the *Assessment Act* that, in the opinion of the council of the municipality, makes a phase-in or the continuation of a phase-in in respect of such land inappropriate, the council may in the by-law under subsection (1) or in another by-law exclude such land from the application of the phase-in.

Improvements replaced after scheme begins

(7) If an improvement to a property is substantially destroyed before a by-law under subsection (1) is passed and, before the end of the last year in which an increase or decrease is phased in, the improvement is replaced, the council of the municipality may amend the by-law under subsection (1) so that the by-law applies to the property as though the improvement had not been substantially destroyed.

Same

(8) Subsection (7) does not apply with respect to an improvement if the destruction of the improvement is by the owner, is permitted by the owner or is done by a person who had a right to destroy the improvement.

Sharing so that no surplus or shortfall

(9) The council of an upper-tier municipality that passes a by-law under subsection (1) shall pass a by-law requiring adjustments between the upper-tier municipality and the lower-tier municipalities so that neither the upper-tier municipality nor any lower-tier municipality has a surplus or shortfall as a result of the phase-in of 1998 assessment-related tax increases or decreases.

Change of assessment

(10) If the 1998 assessment of a property changes as a result of an application or appeal under section 40 or 46 of the *Assessment Act*,

- (a) the 1998 assessment-related tax increase or decrease for the property shall be recalculated under subsection (2),

- (i) by including the changed assessment in "1998 Assessment (property)" in the formulae under subsection (2); and

- (ii) by not including the changed 1998 assessment for this or any other property in "1998 Assessment (class)" in the formulae under subsection (2);
- (b) the taxes on the property shall be recalculated for each year of a phase-in under this section using the recalculated 1998 assessment-related tax increase or decrease; and
- (c) the tax rolls shall be amended to reflect the recalculated taxes.

Information on tax bill

(11) A tax bill for taxes payable in respect of which there is a phase-in shall indicate the amount of taxes that would have been payable without the phase-in, the amount of taxes that are payable, and the difference.

Application to payments in lieu

(12) For the purposes of this section, payments in lieu of taxes, other than an amount referred to in subparagraph ii of paragraph 24 of subsection 3 (1) of the *Assessment Act* or an amount received under section 293 or subsection 294 (4) shall be deemed to be taxes and the land with respect to which such payments in lieu of taxes relate shall be deemed to be rateable for municipal purposes.

Taxes for school purposes

(13) No phase-in of a 1998 assessment-related tax increase or decrease under this section affects the amount a local municipality is required to pay a school board.

International bridges

(14) Amounts payable in 1997 under the *International Bridges Municipal Payments Act, 1981* shall be deemed, for the purposes of this section, to be 1997 taxes.

Tax deferrals, low-income seniors, etc.

289. (1) For the purposes of relieving financial hardship, the council of a municipality, other than a lower-tier municipality, may pass a by-law providing for deferrals or cancellation of, or other relief in respect of, all or part of assessment-related tax increases on property in the residential/farm property class for owners who are, or whose spouses are,

- (a) low-income seniors as defined in the by-law; or
- (b) low-income persons with disabilities as defined in the by-law.

Tax relief must be given

(2) The council of a municipality, other than a lower-tier municipality, shall pass a by-law under subsection (1).

Definitions

(3) For the purposes of this section,

"assessment-related tax increases" means tax increases beginning in 1998 or beginning in a subsequent taxation year for which the day or one of the days as of which current value is determined for the purposes of assessment for the taxation year is different from the corresponding day or days for the previous taxation year; ("augmentation d'impôt découlant de l'évaluation")

"owner" means a person assessed as an owner. ("propriétaire")

Determination of assessment-related tax increase

(4) The amount of an assessment-related tax increase shall be determined as follows:

1. For a tax increase beginning in 1998, the assessment-related tax increase is the tax increase within the meaning of the definition of "1998 assessment-related tax increase or decrease" in subsection 288 (2) reduced, if the tax increase is being phased-in under a by-law under section 288, by the amount not yet phased-in.
2. For a tax increase beginning in a subsequent year, the assessment-related tax increase is the amount determined in accordance with the regulations.

Regulations, assessment-related tax increases

(5) The Minister may make regulations governing the determination of an assessment-related tax increase for the purposes of paragraph 2 of subsection (4).

Application to lower-tiers

(6) A by-law of an upper-tier municipality providing for a deferral or cancellation of tax increases or other relief in respect of tax increases also applies with respect to the tax increases of its lower-tier municipalities.

Amounts transferred by local municipalities adjusted

(7) If a local municipality levies a tax rate for upper-tier or school purposes in respect of which there is a deferral or cancellation of tax increases or other relief in respect of tax increases, the amount of taxes the local municipality shall pay the upper-tier municipality or school boards shall be reduced accordingly.

Deferred taxes, payments to upper-tier, school boards

(8) If a local municipality levies a tax rate for upper-tier or school purposes in respect of which there is a deferral of tax increases, the local municipality shall pay the upper-tier municipality or school boards their share of any deferred taxes and interest when they are paid.

Deferred taxes, etc. shown on tax certificates

(9) The treasurer of a municipality who issues a tax certificate in respect of a property for which taxes have been deferred shall show the amount of the deferred taxes and any accrued interest on the certificate.

Interest

(10) Interest may be charged on taxes deferred under a by-law of a municipality at a rate not exceeding the market rate as determined by the municipality.

Part payments credited to interest first

(11) An amount received in part payment of deferred taxes and interest shall be credited towards the interest before being credited towards the taxes.

Special lien

(12) Section 308 applies, with necessary modifications, with respect to deferred taxes and interest on such taxes.

Taxes on international bridges and tunnels

290. (1) The owner of a bridge or tunnel that crosses a river forming the boundary between Ontario and the United States shall pay a tax on the bridge or tunnel structure to the local municipality in which the Ontario end of the bridge or tunnel is located.

Amount of tax

(2) The amount of the tax for a taxation year is the prescribed amount plus the amount under subsection (3) for the taxation year, if applicable.

Additional amount

(3) For prescribed bridges or tunnels, the amount of the tax shall be increased by any amount by which the American municipal and school taxes for the year on the bridge or tunnel exceed the Ontario municipal taxes for the year on the bridge or tunnel, determined in accordance with the following:

1. The American municipal and school taxes on the bridge or tunnel are the taxes for municipal or school purposes on the bridge or tunnel structure and on land used for the purposes of the bridge or tunnel, converted to Canadian dollars in accordance with the prescribed method.
2. The Ontario municipal taxes on the bridge or tunnel are the taxes for municipal purposes on the bridge or tunnel structure and on land used for the purposes of the bridge or tunnel.

Distribution of the tax

(4) The local municipality shall pay a share of the tax to the upper-tier municipality of which it forms part for municipal purposes, if any.

Amount of share

(5) The upper-tier municipality's share of tax under this section shall be determined in accordance with the following:

$$\text{Share of tax} = \text{Tax under this section} \times \frac{\text{Upper-tier commercial tax}}{\text{Total commercial tax}}$$

Where,

"Total commercial tax" means the total tax levied on land in the commercial property class, for upper-tier and lower tier purposes, in the local municipality;

"Upper-tier commercial tax" means the tax levied on land in the commercial property class, for upper-tier purposes, in the local municipality.

When share paid

(6) The local municipality shall pay the upper-tier municipality its share of the tax under this section for a taxation year in accordance with the following:

1. The upper-tier municipality's share of the prescribed amount referred to in subsection (2) shall be paid on or before December 15 of the taxation year.
2. The upper-tier municipality's share of the amount under subsection (3) shall be paid on or before January 31 of the year after the taxation year.

Information from owners

(7) The council of the municipality to which the tax must be paid may, by by-law, require owners of bridges and tunnels to provide information for the purposes of verifying the amount of the tax. The by-law may specify the information to be provided and the date by which it must be provided.

Regulations

(8) The Minister may make regulations prescribing anything that under this section is to be prescribed.

Taxes are taxes on land

(9) Taxes under this section shall be deemed to be taxes on the land used for the purposes of the bridge or tunnel.

Exception, railway bridges

(10) This section does not apply with respect to a bridge or tunnel used exclusively for railway purposes.

Definition

(11) In this section,

"land used for the purposes of the bridge or tunnel" includes land under the bridge or over the tunnel (other than land covered by water) and land at the end of the bridge or tunnel used in connection with the bridge or tunnel, including duty-free stores.

Definitions

291. (1) In this section,

"district board" means a district welfare administration board established under the *District Welfare Administration Boards Act* or a board of management established under the *Homes for the Aged and Rest Homes Act*; ("conseil de district")

"supporting municipality" means,

- (a) a lower-tier municipality, or
- (b) a municipality that is located wholly or partly within an area under the jurisdiction of a district board or a conservation authority and against which an apportionment is to be made in any year by the district board or conservation authority. ("municipalité participante")

Regulations

(2) Despite this or any other Act, the Lieutenant Governor in Council may, in each year, make regulations prescribing the basis on which apportionments, levies and requisitions are to be made by the councils of municipalities or class of municipality specified in the regulations, by any conservation authority or class of conservation authority specified in the regulations and by any local board or class of local board specified in the regulations.

Retroactivity

(3) A regulation is, if it so provides, effective with reference to a period before it is filed.

Application for review

(4) Where, in respect of any year, the council of a supporting municipality is of the opinion that an apportionment made pursuant to a regulation made under subsection (2) is incorrect because of an error, omission or failure set out in subsection (5) the council may apply to the Ministry, within 30 days after notice of an apportionment was sent to the supporting municipality, for a review to determine the correct proportion of the apportionments, levies or requisitions that each supporting municipality or part thereof shall bear in each year.

Same

(5) The errors, omissions and failures referred to in subsection (4) are,

- (a) an error or omission in the amount of the assessment of one or more supporting municipalities;
- (b) an error or omission in a calculation; or

- (c) a failure to apply one or more provisions of the regulation made under subsection (2).

Appeal to Municipal Board

(6) The council of a supporting municipality may appeal the decision resulting from the Ministry review to the Municipal Board within 30 days after notice of the decision was sent to the municipality.

Payments in lieu of taxes, distribution

292. (1) The Minister of Finance may make regulations governing the distribution of payments in lieu of taxes received by local municipalities.

Same

(2) Regulations under this section may,

- (a) govern which municipalities or school boards payments in lieu of taxes shall be distributed to;
- (b) govern how much shall be distributed to each municipality or school board;
- (c) govern when the distribution shall be made.

Different rules for different payments

(3) Regulations under this section may treat different payments in lieu of taxes differently.

Variation of time of distribution

(4) Regulations under clause (2) (c) may provide for the time the distribution shall be made to be varied by all or some of the interested municipalities and school boards.

Amount to be distributed is a debt

(5) An amount that a local municipality is required to pay under this section is a debt of the local municipality to the municipality or school board to which the amount is required to be paid.

Overpayments by local municipalities

(6) A local municipality that distributes more than is required under this section shall notify the municipality or school board to which the overpayment was distributed of the amount of the overpayment and that municipality or school board shall promptly pay that amount to the local municipality.

Default

(7) If a local municipality fails to make any payment, or portion of it, as required under this section, the local municipality shall pay to the municipality or school board to which the amount is required to be paid, interest on the amount in default at the rate of 15 per cent per year, or such lower rate as the municipality or

school board to which the amount is required to be paid may by by-law determine, from the date payment is due until it is made.

Payments credited to general funds

(8) The portion of payments in lieu of taxes received and not distributed by a local municipality shall be credited to its general fund. The portion of payments in lieu of taxes that are distributed to another municipality shall be credited to the general fund of that municipality.

End of year statement

(9) On or before December 31 in each year, the treasurer of a local municipality shall give each municipality or school board to which the local municipality is required to distribute payments in lieu of taxes a statement setting out sufficient information to enable the municipality or school board to which the statement is given to determine the amount that the local municipality is required to distribute to the municipality or school board under this section.

Conflict

(10) In the event of a conflict between a regulation under this section and a provision of this or of any other Act or regulation, the regulation under this section prevails.

Universities, etc., liable to tax

293. (1) Despite any Act, the council of a local municipality in which there is situate a university designated by the Minister of Education and Training or a college of applied arts and technology may levy an annual tax payable on or after July 1 upon the university or college, not exceeding the prescribed amount for each full-time student enrolled in the university or college in the year preceding the year of levy, as determined by the Minister of Education and Training.

Annual levy on correctional institutions, etc.

(2) Despite any Act, the council of a local municipality, in which there is situate a correctional institution designated by the Solicitor General and Minister of Correctional Services or a training school, or place of secure custody designated under section 24.1 of the *Young Offenders Act* (Canada) designated by the Minister of Community and Social Services, may levy an annual amount payable on or after July 1 upon such institution or school, not exceeding the prescribed amount for each resident place in such institution or school as determined by the Solicitor General and Minister of Correctional Services or the Minister of Community and Social Services, as the case may be.

Annual levy on public hospitals, etc.

(3) Despite any Act, the council of a local municipality, in which there is situate a public hospital or provincial mental health facility designated by the Minister of Health, may levy an annual amount payable on or after July 1 upon such institution, not exceeding the prescribed amount for each provincially rated bed in the public hospital or provincial mental health facility as determined by the Minister of Health.

Annual levy on facilities for the developmentally handicapped

(4) Despite any Act, the council of a local municipality, in which there is situate a facility under the *Developmental Services Act* designated by the Minister of Community and Social Services, may levy an annual amount, payable on or after July 1 upon that facility, not exceeding the prescribed amount for each provincially rated bed in the facility as determined by the Minister of Community and Social Services.

Annual levy on provincial educational institutions

(5) Despite any Act, the council of a local municipality, in which there is situate a provincial education institution designated by the Minister under whose jurisdiction that institution falls, may levy an annual amount payable on or after July 1 upon such institution, not exceeding the prescribed amount for each place in the institution as determined by that Minister.

Agreement for municipal services authorized

(6) A municipality in which an institution designated under subsection (2), (3), (4) or (5) is situate may enter into an agreement with one or more municipalities for providing municipal service or services to that institution.

Minister may direct agreement be entered into

(7) The Minister may direct a municipality in which an institution designated under subsection (2), (3), (4) or (5) is situate to enter into an agreement with another municipality to provide any municipal service or services to that institution on such terms as the Minister may stipulate.

Application to O.M.B.

(8) If the Minister has directed that an agreement be entered into under subsection (7) and the municipalities fail to reach agreement within 60 days after the Minister's direction, either of the municipalities or the Minister may apply to the Ontario Municipal Board and the Board shall settle the terms of the agreement.

Termination of existing agreements

(9) If a municipality has entered into an agreement under subsection (6) or (7), the Province may terminate any agreement between the Province and that municipality to provide any service or services to institutions designated under subsection (2), (3), (4) or (5).

Regulations

(10) The Minister of Finance may make regulations prescribing amounts for the purposes of this section.

Non-profit hospital service corporation, definition

294. (1) In this section,

"non-profit hospital service corporation" means a corporation without share capital that provides laundry or food services to one or more public hospitals, as defined in the *Public Hospitals Act*.

Tax exemption

(2) Real property occupied by a non-profit hospital service corporation and used chiefly by the corporation for one or both of the services mentioned in subsection (1) is exempt from taxation for municipal and school purposes but, subject to subsection (3), is not exempt from a fee or charge under Part XIII in relation to sewage or water.

Exemption from sewer, water fees and charges

(3) The municipality that imposed the fee or charge may exempt the property exempted from taxation for municipal and school purposes under subsection (2) from all or part of the fee or charge based on the amount of service received or the amount of benefit derived or derivable from the construction of the sewage works or water works.

Payment in lieu of taxes

(4) In each year the Minister may pay to a local municipality, in which there is real property exempted from taxation under subsection (2), an amount equal to the taxes for municipal purposes that would have been payable in respect of that real property in that year if the real property had been subject to municipal taxation.

AREA RATING

Definitions

295. (1) In this section and sections 296 to 298,

"benefit" includes a direct or indirect benefit which is available immediately after an expenditure of money on a service or activity and a benefit which will be available only after an additional expenditure of money on the service or activity; ("avantage")

"former municipality" means a municipality as it existed on the day before a restructuring; ("ancienne municipalité")

"merged area" means,

(a) for a restructured municipality which is a local municipality,

- (i) all or the part of a former municipality which forms part of the restructured municipality as a result of the restructuring,
- (ii) all or the part of a police village dissolved in the restructuring which forms part of the restructured municipality after the restructuring,
- (iii) all or part of the unorganized territory in each geographic township which forms part of the restructured municipality as a result of the restructuring, and
- (iv) all unorganized territory which is not located in a geographic township which forms part of the

restructured municipality as a result of the restructuring;

(b) for a restructured municipality which is an upper-tier municipality,

- (i) all or part of a former municipality which was an upper-tier municipality which forms part of the restructured municipality as a result of the restructuring;
- (ii) all or part of a former municipality which was a single-tier municipality which forms part of the restructured municipality as a result of the restructuring;
- (iii) the areas described in subclauses (ii), (iii) and (iv) of clause (a); ("secteur fusionné")

"restructured municipality" means a municipality which is composed of two or more merged areas as a result of a restructuring; ("municipalité issue d'une restructuration")

"restructuring" means restructuring as defined in section 188 and the dissolution of a police village; ("restructuration")

"special service" means a service or activity of a municipality or a local board of the municipality that is,

- (a) not being provided or undertaken generally throughout the municipality; or
- (b) being provided or undertaken at different levels or in a different manner in different parts of the municipality; ("service spécial")

"year of the restructuring" means the calendar year in which a restructuring comes into effect. ("année de la restructuration")

Deemed services

(2) If a municipality or a local board of a municipality pays for a service or activity provided or undertaken by another municipality or a local board of another municipality, the service or activity shall be deemed to be a service or activity of the first municipality.

By-laws re special services

296. (1) A municipality may by by-law,

- (a) identify a prescribed special service;

- (b) determine which of the costs (including capital costs, debenture charges, charges for depreciation or a reserve fund) of the municipality are related to that special service;
- (c) designate the area of the municipality in which the residents and property owners receive or will receive an additional benefit from the special service that is not received or will not be received in other areas of the municipality;
- (d) determine the portion and set out the method of determining the portion of the costs determined in clause (b) which represent the additional costs to the municipality of providing the additional benefit in the area designated in clause (c);
- (e) determine whether all or a specified portion of the additional costs determined in clause (d) shall be raised under subsection (7).

Limitation

(2) An area designated by a municipality for a year under clause (1)(c) cannot include an area in which the residents and property owners do not currently receive an additional benefit but will receive it in the future unless the expenditures necessary to make the additional benefit available appear in the budget of the municipality for the year adopted under section 263 or 264 or the municipality has established a reserve fund to finance the expenditures over a period of years.

Levies

(3) For each year a by-law of a municipality under this section remains in force, the municipality shall, except as otherwise authorized by regulation,

- (a) in the case of a local municipality, levy a special local municipality levy under section 282 on the rateable property in the area designated in clause (1)(c) to raise the costs determined in clause (1)(e);
- (b) in the case of an upper-tier municipality, direct each lower-tier municipality which includes any part of the area designated in clause (1)(c) to levy a special upper-tier levy under section 281 on the rateable property in that part of the municipality to raise its share of the costs determined in clause (1)(e).

Regulations

(4) The Minister may make regulations,

- (a) prescribing special services for the purposes of clause (1)(a);
- (b) establishing conditions and limits on the exercise of the powers of a municipality under this section;

- (c) prescribing the amount of the costs or the classes of costs for the purpose of clause (1) (b);
- (d) prescribing the area or rules for determining the area for the purpose of clause (1)(c);
- (e) prescribe the amount of the additional costs or the rules for determining the additional costs for the purpose of clause (1)(d);
- (f) providing for a process of appealing a by-law under this section and the powers the person or body hearing the appeal may exercise;
- (g) providing that an appeal under clause (f) may apply to all or any aspect of the by-law;
- (h) providing for rules or authorizing the person or body hearing an appeal under clause (f) to determine when by-laws subject to appeal come into force including a retroactive date not earlier than the day on which the by-law was passed;
- (i) for the purpose of subsection (3), exempting or delegating to a municipality the power to exempt specified rateable property from all or part of a special local municipality levy or a special upper-tier levy for a specified special service.

Scope of regulation

(5) A regulation under this section may be general or specific in its application and may apply to different municipalities and different special services differently.

Retroactive

(6) A regulation under this section may be retroactive to a date not earlier than January 1 of the year in which the regulation was made.

Restructured municipalities

297. (1) In addition to the power to pass a by-law under subsection 296(1) with respect to a special service prescribed by the Minister, a municipality which is a restructured municipality may pass a by-law under that subsection with respect to a special service which is not prescribed by the Minister, subject to this section.

Conditions

(2) A by-law may only be passed with respect to a special service which is not prescribed if the special service,

- (a) was being provided or undertaken in a merged area of the restructured municipality by a former municipality or a local board of the former municipality and, in the case of a merged area

which was unorganized territory before the restructuring, by the Crown in right of Ontario, a local roads board, a local services board or other public body, at any time during the 12-month period before the restructuring; and

- (b) continues to be provided or undertaken in the merged area by the restructured municipality or a local board of the restructured municipality at any time during the 12-month period following the restructuring.

Same

(3) The area designated under clause 296 (1) (c) with respect to a special service which is not prescribed must be composed of one or more whole merged areas of the restructured municipality described in subsection (2), except as otherwise authorized by regulation.

Restriction

(4) If a restructured municipality does not pass a by-law with respect to a special service which is not prescribed for any particular year after the year of the restructuring, the municipality cannot pass such a by-law for any future year.

Regulations

(5) The Minister may make regulations for the purpose of subsection (3) establishing an area which is not composed of one or more whole merged areas or prescribing circumstances under which an area is not required to be composed of one or more whole merged areas.

Scope of regulation

(6) A regulation under this section may be general or specific in its application and may apply to different municipalities and different special services differently.

Retroactive

(7) A regulation under this section may be retroactive to a date not earlier than January 1 of the year in which the regulation was made.

Tax rates

298. (1) A restructured municipality may lower the tax rates levied to raise, in the case of a local municipality, the general local municipality levy or, in the case of an upper-tier municipality, the general upper-tier levy that would otherwise apply on the assessment within a merged area if,

- (a) the municipality is of the opinion it would be unfair that the taxpayers in the merged area not receive direct benefit from the assets or any class of assets of the merged area; and
- (b) the amount of taxes lost by lowering the tax rates does not exceed the value of the assets described in clause (a).

Tax rates increased

(2) A restructured municipality may increase the tax rates levied to raise, in the case of a local municipality, the general local municipality levy or, in the case of an upper-tier municipality, the general upper-tier levy that would otherwise apply on the assessment within a merged area if,

- (a) the municipality is of the opinion it would be unfair that the taxpayers outside the merged area be responsible for the liabilities or any class of liabilities of the merged area; and
- (b) the amount of taxes gained by increasing the tax rates does not exceed the value of the liabilities described in clause (a).

Restriction

(3) If a restructured municipality does not pass a by-law with respect to a specific asset or liability of a merged area for any particular year after the year of the restructuring, the municipality cannot pass a by-law with respect to that asset or liability for any future year.

Limited to 7 years

(4) A municipality cannot pass a by-law under this section for any year which is more than 7 years after the year of the restructuring.

Interpretation

(5) A reference to assets and liabilities in relation to a merged area of a restructured municipality means the assets and liabilities of the former municipality in which the merged area was located before the restructuring, including those of its local boards, which became the assets and liabilities of the restructured municipality and its local boards as a result of the restructuring.

Inclusion in budget

(6) A municipality shall include in its budget adopted for a year under section 263 or 264 the amounts resulting from any tax rate reduction or increase made in that year under this section.

Different classes

(7) In any year, tax rate reductions and increases under this section on different classes of property shall be in the same proportion to each other as the tax ratios established for that year under section 278 for the property classes are to each other.

NOTES ON SOURCES OF PART XI PROVISIONS TAX COLLECTION

Proposed New Policies:

Section 302 (1) (b), (2) to (4)
Section 304 (3) to (7)
Section 312 (4) to (6)
Section 313 (3) & (5)
Section 314
Section 315 (1) (a)
Section 316 (2) (b) & (c)
Section 317 (5) (c) and (14)

Other Provisions:

The other provisions of Part XI are based on the Municipal Act, as amended by the Fair Municipal Finance Act, 1997 (Parts I & 2)

PART XI
TAX COLLECTION

Definition

299. In this Part,

"taxpayer" means a person whose name is shown on the tax roll.

Tax roll

300. (1) The treasurer of a local municipality shall prepare a tax roll for each year based on the last returned assessment roll for the year.

Contents

(2) The tax roll shall show for each separately assessed rateable property in the municipality,

- (a) the assessment roll number of the property;
- (b) a description of the property sufficient to identify it;
- (c) the name of every person against whom land is assessed and who is not wholly exempt from taxation, including a tenant assessed under section 18 of the *Assessment Act*;
- (d) the assessed value of the property;
- (e) the total amount of taxes payable;
- (f) the amounts of taxes payable for,
 - (i) the general local municipality levy,
 - (ii) each special local municipality levy,
 - (iii) the general upper-tier levy,
 - (iv) each special upper-tier levy,
 - (v) each school board,
 - (vi) all other purposes; and
- (g) if parts of the property are in two or more property classes, the matters set out in clauses (d), (e) and (f) for each part.

Certification

(3) The treasurer shall certify the tax roll for a year by signing it and endorsing

on it that it is the tax roll of the local municipality for the year.

Collection

(4) The treasurer shall collect the taxes once the tax roll has been prepared.

Adjustments to roll

301. (1) The treasurer shall adjust the tax roll for a year to reflect changes to the assessment roll for that year made under the *Assessment Act* after the tax roll is prepared.

Consequences of adjustments

(2) Taxes for the year shall be collected in accordance with the adjusted tax roll as if the adjustments had formed part of the original tax roll and the local municipality,

- (a) shall refund any overpayment; or
- (b) shall send another tax bill to raise the amount of any underpayment.

By-laws re: instalments

302. (1) A local municipality may pass by-laws providing for,

- (a) the payment of taxes in one amount or by instalments and the date or dates in the year for which the taxes are imposed on which the taxes or instalments are due;
- (b) alternative instalments and due dates in the year for which the taxes are imposed other than those established under clause (a) to allow taxpayers to spread the payment of taxes more evenly over the year;
- (c) the division of the municipality into parts and for each part establishing a different due date for the payment of any instalment;
- (d) an extension of the due dates for any instalments if earlier instalments are paid on time; and
- (e) the immediate payment of any instalments if earlier instalments are not paid on time.

Payment

(2) A taxpayer shall pay taxes in accordance with the instalments and due dates established under clause (1)(a) unless the taxpayer directs the treasurer in writing to use the alternative instalments and due dates established under clause (1)(b).

Alternative method

(3) If a taxpayer provides the direction under subsection (2), the taxes of the

taxpayer are payable in accordance with the alternative instalments and due dates established under clause (1)(b).

Direction continues

(4) A direction given under subsection (2) continues until revoked by the taxpayer in writing.

Notice

303. (1) The treasurer shall send a tax bill to every taxpayer at least 21 days before any taxes shown on the tax bill are due.

Contents of tax bill

(2) A tax bill shall contain,

- (a) the name of the taxpayer;
- (b) the assessment roll number of the property;
- (c) a description of the property sufficient to identify it;
- (d) the assessed value of the property;
- (e) the total amount of taxes payable;
- (f) the amounts of the new taxes required to be shown separately on the tax roll unless the bill is for an interim tax;
- (g) the amount of any taxes previously billed for the year, including any accrued late payment charges;
- (h) the date or dates on which the taxes are due and any alternative schedule of due dates;
- (i) the place or places where the taxes may be paid;
- (j) the late payment charges which will be imposed on overdue taxes;
- (k) the discount which will be given for taxes paid in advance; and
- (l) if portions of the property are in two or more property classes, the matters set out in clauses (d), (e), (f) and (g) for each portion.

Separate tax bills

(3) A local municipality may pass a by-law providing for separate tax bills for municipal purposes and for school purposes.

Address for delivery

(4) The treasurer shall send a tax bill to the taxpayer's residence or place of business or to the premises in respect of which the taxes are payable unless the taxpayer directs the treasurer in writing to send the bill to another address, in which case it shall be sent to that address.

Registered mail

(5) Where a taxpayer directs the treasurer in writing to send the taxpayer's tax bill by registered mail, the treasurer shall comply with the direction and shall add the cost of the registration to the tax roll and the amount shall be deemed to be part of the taxes for which the tax bill was sent.

Direction continues

(6) A direction given under subsection (4) or (5) continues until revoked by the taxpayer in writing.

Proof of delivery

(7) Immediately after sending a tax bill, the treasurer shall create a record of the date on which it was sent and this record is, in the absence of evidence to the contrary, proof that the tax bill was sent on that date.

Errors

(8) No defect, error or omission in the form or substance of a tax bill invalidates any proceedings for the recovery of the taxes.

Form of tax bill

(9) The Minister may require that the tax bill be in the form approved by the Minister.

Restriction

(10) A municipality shall not vary the form unless the variation is expressly authorized by the Minister.

Contents

(11) The Minister may by regulation prescribe the information that must or that may be included on the tax bill.

Restriction

(12) A municipality shall not include other information on the tax bill unless expressly authorized to do so by the Minister.

Late payment charges

304. (1) A local municipality may, in accordance with this section, pass by-laws to impose late payment charges for the non-payment of taxes or any instalment by the due date.

Penalty

(2) A percentage charge, not to exceed 1 1/4 per cent, may be imposed as a

penalty for the non-payment of taxes on the first day of default or such later date as the by-law specifies.

Interest

(3) Interest charges may be imposed on the amount of taxes due and unpaid at the rate and in the manner specified in the by-law but interest may not start to accrue before the first day of default.

Deemed taxes

(4) Charges imposed under subsections (2) and (3) are deemed to be part of the taxes on which the charges have been imposed.

Other interest

(5) A local municipality shall pay interest at the same rate and in the same manner as interest is imposed for the non-payment of taxes on overpayments arising as a result of,

- (a) an error of a municipality, local board or other body for which the tax was being raised; and
- (b) a change under the *Assessment Act*,
 - (i) in an assessment on a property,
 - (ii) in the property class in which a property is placed, or
 - (iii) if parts of a property are placed in different property classes, in the allocation of the assessment on the property between the parts.

Reduction

(6) A local municipality may pass a by-law to reduce the interest rate payable on overpayments under subsection (5) by a maximum of 2 percentage points.

Not retroactive

(7) Interest under subsection (5) begins to accrue the later of,

- (a) the day an overpayment is made; and
- (b) the day this subsection comes into force.

Advance payments

(8) A local municipality may pass a by-law to authorize the treasurer to receive in any year payments on account of tax for that year in advance of the due date and to give a discount for advance payments at the rate and in the manner specified in the by-law even though the taxes have not been levied or the assessment roll has not been returned when the advance payment is made.

Payment

305. (1) Subject to subsection (2), all taxes shall be paid to the treasurer and, upon request of the person paying the taxes, the treasurer shall issue a receipt for the amount paid.

Payment to financial institution

(2) A local municipality may pass a by-law to provide for the payment of taxes by any person into a financial institution to the credit of the treasurer of the municipality and, in that case, the person making the payment shall be entitled to be issued a receipt by the institution for the amount paid.

Definition

(3) In this section,

"financial institution" means,

- (a) a bank listed in Schedule I or II of the *Bank Act* (Canada),
- (b) a trust corporation registered under the *Loan and Trust Corporations Act*,
- (c) subject to the *Credit Unions and Caisses Populaires Act, 1994*, a credit union as defined in that Act, and
- (d) a Province of Ontario Savings Office.

Allocation of payment

306. (1) Subject to subsection (2), where any payment is received on account of taxes, the payment shall be applied,

- (a) first, against late payment charges owing in respect of those taxes according to the length of time the charges have been owing, with the earlier charges being discharged before later ones; and
- (b) second, against the taxes owing according to the length of time they have been owing, with earlier taxes being discharged before later ones.

Effect of certificate

(2) No part payment shall be accepted on account of taxes in respect of which a tax arrears certificate is registered under this Act except under an extension agreement entered into under section 331.

Determination of tax status

307. (1) The treasurer shall by February 28 in each year determine the position of every tax account as of December 31 of the preceding year.

Notice

(2) On making the determination required by subsection (1), the treasurer shall send to every taxpayer who owes taxes from a preceding year a notice of those taxes and of the related late payment charges.

Same

(3) A notice required to be sent under subsection (2) may be sent with a tax bill.

Recovery of taxes

308. (1) Taxes may be recovered with costs as a debt due to the municipality from the taxpayer originally assessed for them and from any subsequent owner of the assessed land or any part of it.

Interpretation

(2) Subsection (1) does not affect the taxpayer's or owner's recourse against any other person.

Special lien

(3) Taxes are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown, and the lien and its priority are not lost or impaired by any neglect, omission or error of the municipality or its agents or through taking no action to register a tax arrears certificate.

Proof of debt

(4) In any action to recover taxes, the production of the relevant part of the tax roll purporting to be certified by the treasurer as a true copy is, in the absence of evidence to the contrary, proof of the debt.

Separate action

(5) The municipality may treat each year's taxes as a separate amount owing to the municipality and may bring separate actions for the purposes of recovering each amount.

Obligations of tenant

309. (1) Where taxes are owed in respect of any land occupied by a tenant, the treasurer may give the tenant notice in writing requiring the tenant to pay the rent in respect of the land to the treasurer as it becomes due from time to time to the amount of the taxes due and unpaid and costs, and the tenant shall comply with the notice.

Remedies of the municipality

(2) The treasurer has the same authority as the landlord of the premises to collect the rent by seizure or otherwise to the amount of the taxes due and unpaid and costs, but collecting the rent does not impose upon the treasurer or the municipality the responsibilities of a landlord.

Deduction from rent

(3) Any amounts paid by a tenant under subsection (1) or (2) that, as between the tenant and the landlord, the latter ought to have paid may be deducted by the tenant from the rent.

Seizure

310. (1) If taxes on land remain unpaid after the due date, the treasurer or the treasurer's agent may seize the following to recover the taxes and costs of the seizure:

1. The personal property belonging to or in the possession of the taxpayer.
2. The interest of the taxpayer in personal property including the taxpayer's right to possession of any personal property under a contract for purchase or a contract by which the taxpayer becomes the owner of the property upon performance of any condition.
3. The personal property on the land and any interest therein as described in paragraph 2 of the owner of the land, even if the owner's name does not appear on the tax roll.
4. Any personal property on the land, title to which is claimed under any assignment or transfer made for the purpose of defeating the seizure.

Exception

(2) Despite subsection (1), the treasurer or treasurer's agent may seize personal property under this section after a tax bill has been sent but before the due date if,

- (a) the treasurer or treasurer's agent has good reason to believe that personal property subject to seizure is about to be removed from the local municipality before the due date;
- (b) the treasurer or treasurer's agent makes an affidavit to that effect before a justice of the peace or the head of council of the local municipality; and
- (c) the justice of the peace or the head of council issues a warrant authorizing the treasurer or the treasurer's agent to seize in accordance with this section.

Exemption from seizure

(3) Despite subsection (1), no seizure shall be made of the personal property of any tenant for taxes not originally assessed against the tenant as tenant of the land.

Same

(4) Despite subsection (1), no seizure shall be made of personal property that is in the possession of the taxpayer for the purpose only of repairing, servicing, storing or

warehousing the personal property or of selling the personal property upon commission or as agent.

Property of assignee, liquidator

(5) Despite subsection (1), personal property in the hands of an assignee for the benefit of creditors or in the hands of a liquidator under a winding-up order may only be seized for,

- (a) the taxes of the assignor or of the company that is being wound up; and
- (b) the taxes on the land on which the personal property was located at the time of the assignment or winding-up order for so long as the assignee or liquidator occupies the land or the personal property remains on the land.

Other exemptions

(6) Personal property exempt from seizure under the *Execution Act* shall not be seized under this section and the person claiming the exemption shall select and point out the personal property for which an exemption is claimed.

Sale

(7) The treasurer or the treasurer's agent may sell all or part of seized personal property at a public auction to recover the taxes and costs of seizure.

Notice

(8) The treasurer or the treasurer's agent shall give the public notice of the time and place of the public auction and of the name of the person whose personal property is to be sold.

Surplus

(9) If the seized personal property is sold for more than the amount of taxes and costs of seizure, the surplus shall be retained by the treasurer for 10 days after the auction and then returned to the person who had possession of the personal property when the seizure was made; however, if another person claims the surplus before it is returned, the surplus shall be retained by the treasurer until the respective rights of the parties have been determined by action or otherwise.

Costs

(10) The costs chargeable on any seizure under this section are those payable to a bailiff under the *Costs of Distress Act*.

Limitation

(11) No person shall make a charge for anything in connection with a seizure under this section unless the thing has been actually done.

Remedy

(12) If any person charges more costs than is allowed by subsection (10) or makes any charge prohibited by subsection (11), the person aggrieved has the same remedies as does a person aggrieved in the cases provided for by sections 2, 4 and 5 of the *Costs of Distress Act*.

Seizure by municipal employees

(13) Where the person making any seizure under this section is a salaried employee of the municipality, the costs of the seizure belong to the municipality.

Priority after notice

(14) Where personal property liable to seizure for taxes under this section,

- (a) is under seizure or attachment or has been seized by the sheriff or by a bailiff of any court;
- (b) is claimed by or in the possession of any assignee for the benefit of creditors or liquidator or of any trustee or authorized trustee in bankruptcy; or
- (c) has been converted into cash and is undistributed by the sheriff, bailiff, assignee, liquidator or trustee,

the sheriff, bailiff, assignee, liquidator, trustee or authorized trustee in bankruptcy shall, upon receiving notice from the treasurer of the amount due for taxes, pay the amount to the treasurer in preference and priority to all other fees, charges, liens and claims.

Statement

311. (1) The treasurer shall, at the request of any person, give to that person an itemized statement of all amounts owing for taxes in respect of any separately assessed rateable property.

Effect

(2) A statement given under subsection (1) is binding on the municipality.

Taxes collected on behalf of other bodies

312. (1) A local municipality which is required by law to impose a tax for a body shall pay the body,

- (a) the amount of the taxes collected; and,
- (b) except where otherwise provided, any amount imposed but not collected due to the non-payment of taxes.

Exception

(2) Despite clause (1) (b), a local municipality is not required to pay the body any amount uncollected due to the non-payment of taxes if the taxes have been

cancelled, reduced, refunded or written off.

Prorated chargebacks

(3) Where a local municipality has paid the body any part of the amount described in clause (1) (b), the municipality shall charge back to every such body its proportionate share of the unpaid taxes which are subsequently cancelled, reduced, refunded or written off.

Chargebacks

(4) If a local municipality charges back an amount described in clause (1) (b) to any body in relation to land in respect of which a notice of vesting is registered under subsection 332 (5) and the municipality subsequently sells the land, the municipality shall pay to the body the proceeds of the sale based on the body's proportionate share of the unpaid taxes.

Deduction

(5) A local municipality may deduct from the proceeds the costs of any improvements made by the municipality on the land and its reasonable administrative costs with respect to that land.

Exception

(6) Subsections (4) and (5) do not apply to land in respect of which a notice of vesting is registered under subsection 332 (5) if the cancellation price, as defined in section 324, was less than \$10,000.

Write-off of taxes

313. (1) Taxes shall not be written off except in accordance with this section.

Conditions

(2) The treasurer of a local municipality shall remove unpaid taxes from the tax roll if,

- (a) the council of the local municipality, on the recommendation of the treasurer, writes-off the taxes as uncollectible; or
- (b) the taxes are no longer payable as a result of a by-law under section 289, a decision under section 317 or 318 or a decision of any court.

Same

(3) A local municipality may only write-off taxes under clause (2) (a) after an unsuccessful tax sale under Part XII and may at that point write-off the taxes whether or not the property vests in the municipality under that Part.

Exception

(4) Despite subsection (3), the local municipality may write-off taxes under clause (2) (a) if the taxes are payable with respect to,

- (a) a property owned by Canada, a province or territory or a Crown agency of any of them; or
- (b) a property in a class of properties prescribed by the Minister.

Regulations

(5) The Minister may make regulations prescribing classes of properties for the purpose of clause (4) (b).

Low taxes

314. (1) A local municipality may pass a by-law providing that where, in any year, the total amount of taxes to be imposed on a property would be less \$50 or such other minimum tax amount prescribed by the Minister, the actual taxes payable shall be an amount, not exceeding that minimum tax amount, specified in the by-law.

Restriction

(2) Despite subsection (1), no taxes are payable if the total amount of taxes to be imposed upon the property would be less than \$10 or such other zero tax amount prescribed by the Minister.

Regulations

(3) The Minister may make regulations prescribing,

- (a) a minimum tax amount for the purposes of subsection (1); and
- (b) a zero tax amount for the purposes of subsection (2).

Division into parcels

315. (1) Upon application made to the clerk of a local municipality by the treasurer of the local municipality or an owner of land, the council of a local municipality may,

- (a) divide, for the purposes of this section, land which is assessed in one block into two or more parcels if each parcel is one that can be legally conveyed under the *Planning Act*;
- (b) apportion the unpaid taxes on the land for the year in which the application is made and the two preceding years among the parcels,
 - (i) in proportion to their relative value at the time the assessment roll for the year in which the application is made was returned, or
 - (ii) if council is of the opinion that an apportionment under subclause (i) is not appropriate due to special circumstances, any other manner; and

- (c) direct what proportion of any part payment of taxes on the land is to be applied to each of the parcels.

Statement

(2) Upon the request of the local municipality, the assessment commissioner shall provide a statement of the relative value of the parcels and the statement is conclusive.

Restriction

(3) An application cannot be made under subsection (1) if, as of the date of the proposed application, a tax arrears certificate could be registered against the land under Part XII, whether or not it has actually been registered.

Meeting

(4) On or before September 30 of the year following the year in which the application is made, council shall,

- (a) hold a meeting at which the applicants and owners of any part of the land may make representations to council;
- (b) notify the applicants and owners of the meeting by mail sent at least 14 days before the meeting; and
- (c) make its decision.

Notice

(5) Within 14 days after making its decision, council shall notify the applicants and owners of the decision and specify the last day for appealing the decision.

Appeal

(6) Within 35 days after council makes its decision, an applicant or owner may appeal the decision of council under clause (1) (b) to the Assessment Review Board by filing a notice of appeal with the registrar of the board.

Decision

(7) The Assessment Review Board shall, after giving notice to the appellants, the owners and the treasurer of the local municipality, hear the appeal and may make any decision council could have made under clause (1) (b).

Delegation of power

(8) The council may pass a by-law authorizing the Assessment Review Board to exercise the powers and functions of the council under clause (1) (b) and subsection (4) with respect to applications made under subsection (1) and subsections (5), (6) and (7) do not apply to these applications.

Documents to be provided

(9) The council shall forward to the registrar of the Assessment Review Board

and to the assessment commissioner a certified copy of any by-law passed under subsection (8) and a copy of every application received to which the by-law applies.

Decision final

(10) A decision of the Assessment Review Board is final and a decision of the council under clauses (1) (a) and (c) is final.

Notice of decision

(11) A council and the Assessment Review Board shall forward a copy of their decisions under this section to the treasurer of the local municipality and to the assessment commissioner.

Adjustment of tax roll

(12) Immediately after the time for appealing a decision of council has expired or if an appeal is made to the Assessment Review Board after its decision, the treasurer of the local municipality shall adjust the tax roll to reflect any division into parcels and apportionment of taxes on the land among the parcels made by the decision.

Effect

(13) Once the tax roll is adjusted, the taxes shall be deemed to have been always levied in accordance with the adjusted tax roll.

Cancellation, reduction, refund of taxes

316. (1) Upon application to the clerk of a local municipality made in accordance with this section, the council of the local municipality may cancel, reduce or refund all or part of taxes levied on land in the year in respect of which the application is made if,

- (a) the use of any part of the land has changed so that the land now falls within the definition of a different property class prescribed under the *Assessment Act* than the property class in which it was taxed;
- (b) the land is exempt from taxation because it has been acquired by the Crown in right of Ontario or Canada or an agent of either Crown or by a municipality;
- (c) a building on the land was destroyed or damaged during the year or during the preceding year after the return of the assessment roll for the preceding year and,
 - (i) the destruction or damage did not occur as a result of a voluntary act of the owner or other person entitled to destroy or damage the building, and
 - (ii) the building could not be used for substantially the same purpose after the destruction or damage that it

was used for before the destruction or damage;

- (d) a mobile unit on the land was removed from the local municipality during the year or during the preceding year after the return of the assessment roll for the preceding year;
- (e) a person was overcharged due to a gross or manifest error that is clerical or factual in nature, including the transposition of figures, a typographical error or similar error but not an error in judgment in assessing the property; or
- (f) repairs or renovations to the land prevented the normal use of the land for a period of at least three months during the year.

Application

(2) An application may only be made by the owner of the land or by another person who,

- (a) has an interest in the land as shown on the records of the appropriate land registry office and the sheriff's office;
- (b) is a tenant, occupant or other person in possession of the land; or
- (c) is the spouse of the owner or other person described in clause (a) or (b).

Timing

(3) An application under this section must be filed with the clerk on or before February 28 of the year following the year in respect of which the application is made.

Application by treasurer

(4) Despite subsections (2) and (3), an application under clause (1) (e) or (f) may be made by the treasurer of the local municipality on or before April 30 of the year following the year in respect of which the application is made if no application is made by a person described in subsection (2) within the deadline set out in subsection (3).

Meeting

(5) On or before September 30 of the year following the year in respect of which the application is made, council shall,

- (a) hold a meeting at which the applicants may make representations to council;
- (b) notify the applicants of the meeting by mail sent at least 14 days before the meeting; and
- (c) make its decision.

Notice

(6) Within 14 days after making its decision, council shall notify the applicants of the decision and specify the last day for appealing the decision.

Appeal

(7) Within 35 days after council makes its decision, an applicant may appeal the decision of council to the Assessment Review Board by filing a notice of appeal with the registrar of the board.

Where no decision

(8) If council fails to make its decision by September 30 of the year following the year in respect of which the application is made, an applicant may appeal to the Assessment Review Board by October 21 of the year by filing a notice of appeal with the registrar of the board and the appeal shall be a new hearing.

Notice

(9) The Assessment Review Board shall notify the appellants and the clerk of the municipality of the hearing by mail sent at least 14 days before the hearing.

Decision

(10) The Assessment Review Board shall hear the appeal and may make any decision that council could have made.

Delegation of power

(11) The council may pass a by-law authorizing the Assessment Review Board to exercise the powers and functions of the council under subsections (1) and (5) with respect to applications made under subsection (1). Subsections (6), (7), (8), (9) and (10) do not apply to these applications.

Documents to be provided

(12) The council shall forward to the registrar of the Assessment Review Board and to the assessment commissioner a certified copy of any by-law passed under subsection (11) and a copy of every application received to which the by-law applies.

Taxes restored

(13) The council or the Assessment Review Board may restore to the tax roll all or any part of the taxes for a year that it reduced, cancelled or refunded as a result of an application in respect of a building under clause (1) (c) if it is satisfied that during the year the building has been reconstructed or repaired and is capable of being used for the purposes for which it was used immediately before it was destroyed or damaged.

Restriction

(14) A decision cannot be made under subsection (13) unless,

- (a) it is made on or before February 28 in the year following the year in respect of which the application is made; and
- (b) every person who, according to the tax roll, would be liable for the

restored taxes, is given an opportunity to make representations to the council or board, as the case may be.

Appeal

(15) A decision of council under subsection (13) may be appealed to the Assessment Review Board and subsections (6), (7), (9) and (10) apply with necessary modifications to the appeal.

Restored taxes payable

(16) Taxes restored to the tax roll for a year, after a tax bill is sent to the person liable for the taxes, are payable,

- (a) as part of the next instalment of taxes payable in that year; or
- (b) if no instalment remains payable in that year or the tax bill is not sent until the following year, on the 22nd day after the tax bill is sent.

Decision final

(17) A decision of the Assessment Review Board is final.

Notice of decision

(18) A council and the Assessment Review Board shall forward a copy of their decisions under this section to the assessment commissioner.

Overcharges

317. (1) Upon application to the clerk of a local municipality made in accordance with this section, the council of the local municipality may cancel, reduce or refund all or part of the taxes levied on land in one or both of the two years preceding the year in which the application is made for any overcharge caused by a gross or manifest error in the preparation of the assessment roll that is clerical or factual in nature, including the transposition of figures, a typographical error or similar errors, but not an error in judgment in assessing the property.

Application

(2) An application may only be made by the owner of the land or by another person described in subsection 316 (2).

Timing

(3) An application must be filed with the clerk between March 1 and December 1 of a year and may apply to taxes levied for one or both of the two years preceding the year in which the application is made and the application shall indicate to which year or years it applies.

Exception

(4) Despite subsection (3), if the Minister of Finance extends the time for the return of the assessment roll under subsection 36 (2) of the *Assessment Act*, an

application shall not be made until at least 61 days after the return.

Restriction

(5) Despite subsection (3), an application shall not be made for taxes levied in a year if the assessment on the land for that year was subject to an appeal, complaint or application under section 35, 40 or 46 of the *Assessment Act* unless,

- (a) the error is made subsequent to the commencement of all appeals, complaints or applications;
- (b) the appeal, complaint or application,
 - (i) is made by a person other than the taxpayer,
 - (ii) is withdrawn before the appeal, complaint or application is actually heard,
 - (iii) is made in respect of a change to or the addition of the school support of the taxpayer on or to the assessment roll, or
 - (iv) is made in respect of a change to the name or mailing address of the taxpayer on the assessment roll; or
- (c) the appeal, complaint or application is in a class of appeals, complaints or applications prescribed by the Minister.

Forwarding documents

(6) The clerk shall send a copy of the application to the assessment commissioner and the registrar of the Assessment Review Board.

Confirmation

(7) An application shall not be heard by council under subsection (9) unless the assessment commissioner confirms an error in the assessment referred to in the application.

Notice

(8) If an application is not valid under subsection (4), the clerk shall notify the applicant in writing of the reasons it is not valid.

Meeting

(9) On or before September 30 of the year following the year in which the application is made, council shall,

- (a) hold a meeting at which the applicants may make representations to council;

- (b) notify the applicants of the meeting by mail sent at least 14 days before the meeting; and
- (c) make its decision.

Notice

(10) Within 14 days after making its decision, council shall notify the applicants of the decision.

Committee

(11) The council may appoint a committee composed of at least three persons who are members of council or who are eligible to be elected members of council, excluding employees of the municipality or its local boards, to hear applications under clause (9) (a) and to provide its recommendations to council and section 250 applies with necessary modifications to the committee.

Delegation of power

(12) The council may pass a by-law authorizing the Assessment Review Board to exercise the powers and functions of the council under subsections (1) and (9) with respect to applications made under subsection (1) and subsections (7) and (8) do not apply to these applications.

Documents to be provided

(13) The council shall forward to the registrar of the Assessment Review Board and to the assessment commissioner a certified copy of any by-law passed under subsection (12).

Regulations

(14) The Minister may make regulations prescribing classes of appeals, complaints or applications for the purpose of clause (5) (c).

Increase of taxes

318. (1) Upon application made to the clerk of a local municipality by the treasurer of the local municipality, the council of a local municipality may increase the taxes levied on a person with respect to land in the year in which the application is made to the extent of any undercharge caused by a gross or manifest error that is a clerical or factual error, including the transposition of figures, a typographical error or similar error, but not an error in judgement in assessing the land.

Exception

(2) An application cannot be made under subsection (1) if the treasurer has issued a tax statement under section 311 with respect to the taxes before notice is given under clause (3) (b).

Meeting

(3) Council shall,

- (a) hold a meeting at which the treasurer and the person in respect of whom the application is made may make representations to council;
- (b) notify the treasurer and the person in respect of whom the application is made of the meeting by mail sent at least 14 days before the meeting; and
- (c) make its decision.

Notice

(4) Within 14 days after making its decision, council shall notify the treasurer and the person in respect of whom the application is made of the decision and specify the last day for appealing the decision.

Appeal

(5) Within 35 days after council makes its decision, the person in respect of whom the application is made may appeal the decision of council to the Assessment Review Board by filing a notice of appeal with the registrar of the board.

Notice

(6) The Assessment Review Board shall notify the appellant and the clerk of the municipality of the hearing by mail sent at least 14 days before the hearing.

Decision

(7) The Assessment Review Board shall hear the appeal and may make any decision that council could have made.

Delegation of power

(8) The council may pass a by-law authorizing the Assessment Review Board to exercise the powers and functions of the council under subsections (1) and (3) with respect to applications made under subsection (1). Subsections (4), (5), (6) and (7) do not apply to these applications.

Documents to be provided

(9) The council shall forward to the registrar of the Assessment Review Board and to the assessment commissioner a certified copy of any by-law passed under subsection (8) and a copy of every application received to which the by-law applies.

Decision final

(10) A decision of the Assessment Review Board under this section is final.

Collection

(11) The amount of an increase in taxes under this section is collectible as if it had been levied and included on the original tax bill except,

- (a) the amount is not payable until the time for appealing has expired or, if an appeal is made, the Assessment Review Board has made its

decision; and

- (b) the amount is not subject to late-payment charges until the 22nd day after the amount becomes payable.

Notice

(12) A council and the Assessment Review Board shall forward a copy of their decisions under this section to the assessment commissioner.

Regulation

319. For the purpose of sections 316, 317 and 318 the Minister may by regulation define "gross or manifest error".

Rebates to eligible charities, etc.

320. (1) A municipality, other than a lower-tier municipality, may pass a by-law providing for rebates of taxes to all eligible charities and to any similar organizations specified in the by-law, for the purpose of giving the charities and similar organizations relief from taxes on land that they occupy.

Amount of relief

(2) The rebate provided by a by-law under subsection (1) to each eligible charity and similar organization shall not exceed 40 per cent of the taxes that would otherwise be levied on land occupied by the charity or similar organization.

Equal treatment

(3) The amount of the rebate provided by a by-law under subsection (1) to each eligible charity and similar organization shall be the same, when expressed as a percentage of the taxes that would otherwise be levied on land occupied by each charity and similar organization.

Application

(4) A by-law under subsection (1) may apply only to land in,

- (a) the commercial property class or the industrial property class, as prescribed under section 7 of the *Assessment Act*; or
- (b) a property class prescribed under section 7 of the *Assessment Act* that is not mentioned in subsection 7 (2) of that Act.

Who gives rebates

(5) Rebates under a by-law under subsection (1) shall be administered and paid,

- (a) if the by-law is passed by a single-tier municipality, by that municipality;
- (b) if the by-law is passed by an upper-tier municipality, by its lower-tier municipalities.

Sharing costs of rebates

(6) The costs of a rebate of taxes on a parcel of land shall be shared by the municipalities and school boards that share in the revenue from the taxes on the parcel of land in the same proportion as the municipalities and school boards share in those revenues.

Definition

(7) In this section,

"eligible charity" means a registered charity as defined in subsection 248 (1) of the *Income Tax Act* (Canada) that has a registration number issued by the Department of National Revenue.

Federal Crown land

321. (1) If the Crown in right of Canada owns or has an interest in land, the Crown may, with the consent of the municipality, pay to the municipality an amount in lieu of taxes or charges for specific municipal services which a tenant or user of the land would otherwise be required to pay.

Interpretation

(2) Specific municipal services in subsection (1) do not include the right to attend a school.

Where payment accepted

(3) If a municipality accepts a payment under this section,

- (a) the taxes or charges in respect of which the payment was made are deemed to be paid in full;
- (b) the amount paid in lieu of taxes shall be distributed to any body for which the municipality is required by law to levy taxes or raise money as if the taxes had been levied and collected in the usual way; and
- (c) subject to clause (b), the payment shall be credited to the general funds of the municipality.

Offence

322. A treasurer, clerk or other officer who refuses or neglects to perform any duty under this Part is guilty of an offence.

Holidays

323. If the time for any proceeding or for the doing of anything in the offices of a municipality under this Part expires or falls upon a holiday, a Saturday or on any other day when the offices are closed but would ordinarily be open, the time shall be extended to and the thing may be done on the next day when the offices are open which is not a holiday or Saturday.

NOTES ON SOURCES OF PART XII PROVISIONS SALE OF LAND FOR TAX ARREARS

Proposed New Policies:

Section 324 (1): definition of "mobile home"

Section 331 (1)

Section 332 (3), (4), (5) (b), 6 (e), (8), (15) & (16)

Section 333 (5)

Section 341

Section 342

Other Provisions:

The other provisions of Part XII are based on the Municipal Tax Sales Act.

PART XII
SALE OF LAND FOR TAX ARREARS

Definitions

324. (1) In this Part,

"cancellation price" means an amount equal to all the tax arrears owing at any time in respect of land together with all current real property taxes owing, interest and penalties thereon and all reasonable costs incurred by the municipality after the treasurer becomes entitled to register a tax arrears certificate under section 326 in proceeding under this Part or in contemplation of proceeding under this Part and may include,

- (a) legal fees and disbursements,
- (b) the costs of preparing an extension agreement under section 331,
- (c) the costs of preparing any survey required to register a document under this Part, and
- (d) a reasonable allowance for costs that may be incurred subsequent to advertising under section 332; ("coût d'annulation")

"mobile home" means a dwelling that is designed to be made mobile and that is assessed under the *Assessment Act* as part of the land on which it is situate; (maison mobile)

"municipality" means a local municipality; ("municipalité")

"notice of vesting" means a notice of vesting prepared under section 332 and includes the title conferred by the registration of the notice of vesting; ("avis de dévolution")

"public sale" means a sale by public auction or public tender conducted in accordance with this Part and the prescribed rules; ("vente publique")

"real property taxes" means the amount of taxes levied on real property under this Act and the *Education Act* and any amounts owed under the *Drainage Act*, the *Tile Drainage Act* and the *Shoreline Property Assistance Act* with respect to the real property and includes any amounts deemed to be taxes by or under any other Act; ("impôts fonciers")

"tax arrears" means any real property taxes placed on or added to a tax roll that remain unpaid on January 1 in the year following that in which they were placed on or added to the roll; ("arriérés d'impôts")

"tax deed" means a tax deed prepared under section 332 and includes the title

conferred by the registration of the tax deed; ("acte d'adjudication")

Application to tax sales under *Education Act*

(2) Where, under the *Education Act*, an officer or collector has the powers and duties of a treasurer and the board has the powers and duties of the council of a municipality, this Part and the regulations made under it apply to tax arrears and to every sale of land for tax arrears owed to the board.

Register of title, abstract index

325. For the purposes of this Part,

"index of executions" and "index of writs received for execution" include a warrant or other process or a certificate of lien that is filed with the sheriff and recorded in the index of executions under the *Land Titles Act* or in the index of writs received for execution by the sheriff, as the case may be. ("répertoire des brefs d'exécution", "répertoire des brefs d'exécution reçus")

"register of title" and "abstract index" include an instrument received for registration before the closing of the land registry office on the day the tax arrears certificate was registered even if the instrument has not been abstracted or entered in the register or index at that time; ("registre des titres", "répertoire par lot")

Registration of tax arrears certificate

326. (1) Where any part of tax arrears is owing with respect to any land in a municipality on January 1 in the third year following that in which the real property taxes become owing the treasurer of the municipality, unless otherwise directed by the municipality, may prepare and register a tax arrears certificate against the title to that land.

Form

(2) A tax arrears certificate shall indicate that the land described in the certificate will be sold by public sale if the cancellation price is not paid within one year following the date of the registration of the tax arrears certificate.

Escheated land

(3) This section applies to land that is vested in the Crown because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act* before or after the registration of a tax arrears certificate and that land may be sold under this Act for tax arrears that accrued before the land vested in the Crown.

Scope of certificate

(4) A tax arrears certificate shall not include more than one separately assessed parcel of land.

Notice of registration

327. (1) Within 60 days after the registration of a tax arrears certificate, the treasurer shall send a notice of the registration of the certificate to the following persons:

1. The assessed owner of the land.
2. The assessed tenants in occupation of the land.
3. Where the land is registered under the *Land Titles Act*, every person appearing by the register of title and by the index of executions to have an interest in the land at the time of closing of the land registry office on the day the tax arrears certificate was registered, other than a person who has an interest referred to in clause 332 (7) (a) or (b).
4. Where the *Registry Act* applies to the land, every person appearing by the abstract index and by the index of writs received for execution by the sheriff for the area in which the land is situate to have an interest in the land at the time of closing of the land registry office on the day the tax arrears certificate was registered, other than a person who has an interest referred to in clause 332 (7) (a) or (b).

Spouse of owner

(2) If a notice is sent under this section to a person appearing by the records of the land registry office to be the owner of the land or to a person who is an assessed tenant in occupation of the land, a notice shall also be sent to the spouse of that person and, where this subsection is complied with, section 43 of the *Family Law Act* shall be deemed to have been complied with.

Statutory declaration

(3) The treasurer shall, immediately after complying with subsections (1) and (2), make and register a statutory declaration stating the names and addresses of the persons to whom notice was sent.

Limitation

- (4) A person is not entitled to notice under this section if,
- (a) after a reasonable search of the records mentioned in subsection 334 (1), the treasurer is unable to find the person's address and the treasurer is not otherwise aware of the address; or
 - (b) the person has expressly waived the right to notice, either before or after the notice should have been sent.

Cancellation of tax arrears certificate

328. (1) Before the expiry of the one-year period mentioned in subsection 332

(1), any person may have the tax arrears certificate cancelled by paying to the municipality the cancellation price as of the date the payment is tendered and after the expiry of the one-year period a public sale shall be conducted by the treasurer in accordance with section 332.

Cancellation certificate

(2) If payment has been made under subsection (1), the treasurer shall immediately register a tax arrears cancellation certificate.

Lien

(3) If the cancellation price is paid by a person entitled to receive notice under subsection 327 (1) or an assignee of that person, other than the owner of the land or the spouse of the owner, the person has a lien on the land concerned for the amount paid.

Priority of lien

(4) A lien under subsection (3) has priority over the interest in the land of any person to whom notice was sent under section 327.

Contents of certificate

(5) Where there is a lien under subsection (3), the tax arrears cancellation certificate shall state that the person named therein has a lien on the land.

Accounting for cancellation price

329. (1) Except where the cancellation price has been determined in accordance with a by-law passed under section 338, a person who pays the cancellation price before the expiry of the one-year period mentioned in subsection 332 (1), by a written request made within 30 days after making the payment, may require the treasurer to provide an itemized breakdown of the calculation of the cancellation price that has been paid.

Application to court

(2) If the treasurer fails to provide the itemized breakdown of the calculation within 30 days of the request or if the person who made the request is of the opinion that the cancellation price has not been calculated properly or that the costs included in the cancellation price by the municipality as costs incurred in proceeding under this Part are unreasonable, the person who made the request may apply to the Ontario Court (General Division) for an accounting of the cancellation price.

Determination by court

(3) The court shall determine the matter and, if the court determines that the cancellation price was not calculated properly or the costs included in the cancellation price are unreasonable, it may make an order setting a cancellation price which is proper and reasonable but no such order shall relieve a taxpayer of any liability to pay any validly imposed real property taxes.

Effect of cancellation certificate

330. Unless otherwise shown in the tax arrears cancellation certificate, the

certificate, when registered, is conclusive proof of the payment of the cancellation price as of the date set out in it.

Extension agreements

331. (1) A municipality, by a by-law passed after the registration of the tax arrears certificate and before the expiry of the one-year period mentioned in subsection 332 (1), may authorize an extension agreement with the owner of the land, the spouse of the owner, a mortgagee or a tenant in occupation of the land extending the period of time in which the cancellation price is to be paid.

Conditions

(2) The agreement may be subject to such conditions relating to payment as are set out in it but shall not,

- (a) reduce the amount of the cancellation price; or
- (b) prohibit any person from paying the cancellation price at any time.

Mandatory contents

(3) Every extension agreement shall state,

- (a) when and under what conditions it shall cease to be considered a subsisting agreement;
- (b) that any person may pay the cancellation price at any time; and
- (c) that it terminates upon payment of the cancellation price by any person.

Calculation of time

(4) The period during which there is a subsisting extension agreement shall not be counted by the treasurer in calculating the periods mentioned in subsection 332 (1).

Inspection of extension agreement

(5) The treasurer, on the request of any person, shall permit the person to inspect a copy of an extension agreement and shall provide copies of it at the same rate as is charged under section 243.

Cancellation certificate

(6) When the terms of an extension agreement have been fulfilled, the treasurer shall immediately register a tax arrears cancellation certificate.

Public sale

332. (1) If the cancellation price remains unpaid 280 days after the day the tax arrears certificate is registered, the treasurer, within 30 days after the expiry of the 280 day period, shall send to the persons entitled to receive notice under section 327 a final notice that the land will be advertised for public sale unless the cancellation price

is paid before the end of the one-year period following the date of the registration of the tax arrears certificate.

Advertisement

(2) If, at the end of the one-year period following the date of the registration of the tax arrears certificate the cancellation price remains unpaid and there is no subsisting extension agreement, the land shall be offered for public sale by public auction or public tender, as the treasurer shall decide, and the treasurer shall immediately,

- (a) make a statutory declaration stating the names and addresses of the persons to whom notice was sent under subsection (1); and
- (b) advertise the land for sale once in The Ontario Gazette and once a week for four weeks in a newspaper that, in the opinion of the treasurer, has such circulation within the municipality as to provide reasonable notice of the sale or, if there is no such newspaper, post a notice in the municipal office and one other prominent place in the municipality.

Exclusion of all mobile homes

(3) The municipality may by by-law determine that all mobile homes situate on the land offered for sale shall not be included in the sale.

Advertisement

(4) If a by-law is passed under subsection (3), the advertisement of the sale shall state that the land to be sold does not include the mobile homes on the land.

Conduct of sale

(5) The treasurer, in accordance with the prescribed rules, shall conduct a public sale and determine whether there is a successful purchaser and,

- (a) if there is a successful purchaser, the treasurer shall prepare and register a tax deed in the name of the successful purchaser or in such name as the successful purchaser may direct; or
- (b) if there is no successful purchaser, the treasurer may prepare and register, in the name of the municipality, a notice of vesting.

Statutory declaration

(6) The treasurer shall make and register, at the time of registering a tax deed or notice of vesting, a statutory declaration stating that,

- (a) the tax arrears certificate was registered with respect to the land at least one year before the land was advertised for sale;
- (b) notices were sent and the statutory declarations were registered in substantial compliance with this Part and the regulations made

under this Part;

- (c) the cancellation price was not paid within one year following the date of the registration of the tax arrears certificate;
- (d) the land was advertised for sale, in substantial compliance with this Part and the regulations made under this Part; and
- (e) if applicable, the municipality passed a by-law under subsection (3) excluding mobile homes from the sale of the land.

Effect of conveyance

(7) A tax deed or notice of vesting, when registered, vests in the person named in it or in the municipality, as the case may be, an estate in fee simple in the land, together with all rights, privileges and appurtenances and free from all estates and interests, subject only to,

- (a) easements and restrictive covenants that run with the land;
- (b) any estates and interests of the Crown in right of Canada or in right of Ontario other than an estate or interest acquired by the Crown in right of Ontario because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act*;
- (c) any interest or title acquired by adverse possession by abutting landowners before the registration of the tax deed or notice of vesting.

Restriction

(8) If the municipality passes a by-law under subsection (3), a tax deed or notice of vesting does not vest in the person named in the tax deed or the municipality, as the case may be, any interest in the mobile homes situate on the land.

Adverse possession

(9) A tax deed or notice of vesting, when registered, vests in the person named in it or in the municipality, as the case may be, any interest in or title to adjoining land acquired by adverse possession before the registration of the tax deed or notice of vesting if the person originally acquiring the interest or title by adverse possession did so as a consequence of possession of the land described in the tax deed or notice of vesting.

No warranty

(10) A tax deed does not,

- (a) impose an obligation on the municipality to provide vacant possession; or
- (b) invalidate or affect the collection of a rate that has been assessed,

imposed or charged on the land under any Act by the municipality before the registration of the tax deed and that accrues or becomes due after the registration of the tax deed.

Municipal bid or tender

(11) The municipality to which the tax arrears are owed may by resolution authorize the municipality to bid at or submit a tender in a public sale conducted under this section if the municipality requires the land for a municipal purpose.

Inspection of statutory declaration

(12) The treasurer, on the request of any person, shall permit the person to inspect a copy of the statutory declaration made under clause (2) (a) and shall provide copies of it at the same rate as is charged under section 243.

Power of treasurer

(13) Despite anything in the prescribed rules, except the rules relating to the determination of the successful purchaser, the treasurer, in conducting a sale under this Part, may do all things that, in his or her opinion, are necessary to ensure a fair and orderly sale.

Value of land

(14) The treasurer is not bound to inquire into or form any opinion of the value of the land before conducting a sale under this Part and the treasurer is not under any duty to obtain the highest or best price for the land.

No registration

(15) If a notice of vesting is not registered within one year after a public sale is conducted at which there is no successful purchaser, the tax arrears certificate with respect to the land shall be deemed to be cancelled.

Effect

(16) Subsection (15) does not, ~~in effect, prevent the treasurer from~~

- (a) prevent the treasurer from registering a new tax arrears certificate with respect to the land and proceeding under this Part; or
- (b) relieve the taxpayer of any liability to pay any real property taxes imposed before the sale.

Application of proceeds

333. (1) The proceeds of a sale under section 332 shall,

- (a) firstly, be applied to pay the cancellation price;
- (b) secondly, be paid to all persons, other than the owner, having an interest in the land according to their priority at law; and
- (c) thirdly, be paid to the person who immediately before the

registration of the tax deed was the owner of the land.

Payment into court

(2) The treasurer shall pay the proceeds of sale, minus the cancellation price, into the Ontario Court (General Division) together with a statement outlining the facts under which the payment into court is made including whether the land, at the time of the registration of the tax arrears certificate, was vested in the Crown because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act*.

Notice

(3) Within 60 days after making a payment into court under subsection (2), the treasurer shall send a copy of the statement to the Public Guardian and Trustee.

Payment out of court

(4) Any person claiming entitlement under clause (1) (b) or (c) may apply to the Ontario Court (General Division) within one year of the payment into court under subsection (2) for payment out of court of the amount to which the person is entitled.

Same

(5) The court shall, after one year has passed from the day the payment was made into court, determine all of the entitlements to receive payments out of the proceeds of sale.

Forfeiture

(6) If no person makes an application under subsection (4) within the one-year period referred to in that subsection, the amount paid into court under subsection (2) shall be deemed to be forfeited,

- (a) to the Public Guardian and Trustee if, at the time of the registration of the tax arrears certificate, the land was vested in the Crown because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act*; or
- (b) in any other case, to the municipality.

Payment out

(7) The Public Guardian and Trustee or the municipality, as the case may be, may apply to the Ontario Court (General Division) for payment out of court of the amount that was paid in.

Statement to be relied on

(8) In the absence of evidence to the contrary, the Ontario Court (General Division) may rely on the statement of the treasurer under subsection (2) in determining whether the amount paid into court under that subsection is forfeited to the Public Guardian and Trustee or the municipality under subsection (6).

Payment into general funds

(9) Money received by a municipality under subsection (6) shall be paid into the general funds of the municipality.

Methods of giving notice

334. (1) Any notice required to be sent to any person under this Part may be given by personal delivery or be sent by certified or registered mail,

- (a) in the case of the assessed owner, to the address of the person as shown on the last returned assessment roll of the municipality;
- (b) in the case of any person whose interest is registered against the title of the land, to the address of the person furnished under section 166 of the *Land Titles Act* or section 42 of the *Registry Act* or if none, to the address of the solicitor whose name appears on the registered instrument;
- (c) in the case of a person appearing to have an interest in the land by the index of executions for land registered under the *Land Titles Act* or by the index of writs received for execution by the sheriff for land registered under the *Registry Act*, to the address of the person or person's solicitor as shown in the index of executions or in the records of the sheriff for the area in which the land is situate;
- (d) in the case of a spouse of the person appearing by the records of the land registry office to be the owner of the land, addressed to the spouse of (name of person) at the usual or last known address of such spouse or, if unknown, at the address of the land; and
- (e) in the case of the Public Guardian and Trustee, addressed to the Public Guardian and Trustee.

Same

(2) Any notice required to be sent under this Part to an assessed tenant in occupation of the land and to his or her spouse may be given to them jointly by personal delivery or by ordinary mail addressed to the occupant and spouse at the address of the land.

Placard

(3) If six or more assessed tenants occupy land, the notice referred to in subsection (2) may be given by placing a placard containing the terms of the notice in a conspicuous place on the land and the placing of the placard shall be deemed to be sufficient service of the notice.

Statutory declaration, effect

(4) A statutory declaration registered under subsection 327 (3) or made under clause 332 (2) (a) is proof in the absence of evidence to the contrary that the notices required to be sent were sent to the persons named in the statutory declaration and

received by them.

Same

(5) A statutory declaration registered under subsection 332 (6) is conclusive proof of the matters referred to in clauses 332 (6) (a) to (d).

Receipt of notice

(6) Nothing in this Part requires the treasurer to ensure that a notice that is properly sent under this Part is received by the person to whom it was sent.

Voidable proceedings

335. (1) No proceedings for the sale of land under this Part are void by reason of any neglect, omission or error but, subject to this section and to section 336, any such neglect, omission or error may render the proceedings voidable.

Same

(2) Subject to subsection (4) and to section 336, the proceedings under this Part are voidable if there is,

- (a) a failure on the part of the treasurer to substantially comply with section 327 or subsection 332 (1); or
- (b) an error or omission in the registration or sale of the land, other than an error or omission mentioned in subsection (6).

Duty of treasurer

(3) If, before the registration of a tax deed or notice of vesting, the treasurer becomes aware of a failure, error or omission referred to in subsection (2), the treasurer shall immediately register a tax arrears cancellation certificate but this subsection does not apply so as to prevent the treasurer from registering a new tax arrears certificate and proceeding under this Part.

Actual prejudice

(4) Proceedings for the sale of land under this Part are not voidable unless the person complaining of any neglect, error or omission establishes that he or she suffered actual prejudice as a result of the neglect, error or omission.

Proceeding not voidable

(5) No proceedings under this Part are rendered voidable by reason of,

- (a) a failure on the part of the treasurer to distrain for any reason or take any other action for the collection of taxes;
- (b) an error in the cancellation price other than a substantial error;
- (c) any error in the notices sent or delivered under this Part if the error has not substantially misled the person complaining of the error;

- (d) any error in the publishing or posting of advertisements if the error has not substantially misled the person complaining of the error; or
- (e) any error in the description of the land in the tax arrears certificate if the error has not substantially misled the person complaining of the error.

Treasurer may halt proceedings

(6) The treasurer may register a cancellation certificate if, in his or her opinion,

- (a) it is not in the financial interests of the municipality to continue with proceedings under this Part; or
- (b) because of some neglect, error or omission, it is not practical or desirable to continue proceedings under this Part.

Effect

(7) Subsection (6) does not apply so as to prevent the treasurer from registering a new tax arrears certificate and proceeding under this Part.

Effect of registration

336. (1) Subject to proof of fraud, every tax deed and notice of vesting, when registered, is final, binding and conclusive and not subject to challenge for any reason including,

- (a) the invalidity of any assessment upon which the tax arrears were based; and
- (b) the breach of any requirements, including notice requirements, imposed by this or any other Act or otherwise by law.

No action

(2) No action may be brought for the recovery of the land after the registration of the tax deed or notice of vesting if the statutory declaration required by subsection 332 (6) has been registered.

Exception

(3) Subsection (1) does not apply so as to prevent a person from bringing an action for damages against the municipality.

Mining rights

337. (1) Despite sections 326, 332 and 336, if mining rights in land are liable for taxes under the *Mining Act* and the land is sold for taxes or is vested in a municipality under this Act on or after April 1, 1954, the sale or vesting severs the surface rights from the mining rights and only the surface rights pass to the tax sale purchaser or vest in the municipality and the sale or registration does not affect the mining rights.

Same, earlier vesting

(2) Despite this or any other Act but subject to any forfeiture to the Crown legally effected under the *Mining Tax Act*, if mining rights in land were liable for area tax under the *Mining Tax Act* and the land was sold for taxes under this Act or was vested in a municipality upon registration of a tax arrears certificate under the *Municipal Affairs Act* before April 1, 1954 and, before the sale or registration the surface rights were not severed from the mining rights and the sale or certificate purported to vest all rights in the land in the tax sale purchaser or in the municipality, that sale or certificate shall be deemed to have vested in the tax sale purchaser or in the municipality, without severance, both the surface and mining rights.

Scale of costs

338. A municipality, instead of charging the municipality's actual costs in determining any cancellation price, may fix a scale of costs to be charged as the reasonable costs of proceedings under this Part, which scale shall be designed to meet only the anticipated costs of the municipality.

Immunity from civil actions

339. No action or other proceeding for damages shall be brought against the treasurer or any officer or employee of the municipality acting under the treasurer's authority as a result of any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Part or the regulations made under this Part or any neglect or default in the performance or exercise in good faith of such duty or power but any such action or proceeding may be brought against the municipality.

Regulations

340. (1) The Minister may make regulations prescribing rules for the sale of land under this Part by public sale and the rules,

- (a) shall set out the method of determining a successful purchaser, and
- (b) may require the submission of deposits, in such amount and in such form as may be set out in the rules, and for the forfeiture and disposition thereof.

Forms

(2) The Minister may make regulations requiring that any certificate, notice, statutory declaration, advertisement, tender, tax deed or statement referred to in this Part,

- (a) be in a prescribed form;
- (b) be in a form approved by the Minister; or
- (c) contain the provisions prescribed.

Transition, prior registrations

341. (1) This section applies to land in respect of which a tax arrears certificate was registered under the *Municipal Affairs Act*, being chapter 303 of the Revised Statutes of Ontario, 1980, before January 1, 1985 or a certificate was given under section 433 of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, before January 1, 1985.

Notice of forfeiture registered

(2) If, before the day this section comes into force, a notice of forfeiture was registered with respect to any land under section 23 of the *Municipal Tax Sales Act*, 1984, the land is vested in the municipality upon registration of the notice in accordance with that section as it read on the day before this section comes into force.

Certificate registered

(3) If, before January 1, 1985, a tax arrears certificate was registered under the *Municipal Affairs Act* in respect of any land and a notice of forfeiture has not been registered with respect to the land,

- (a) a municipality may register a notice of forfeiture in accordance with section 23 of the *Municipal Tax Sales Act*, 1984, as it read on the day before this section comes into force and the land is vested in the municipality upon registration of the notice in accordance with that section; or
- (b) a municipality may register a tax arrears cancellation certificate.

Effect of registration

(4) Registration of a tax arrears cancellation certificate under clause (3) (b) does not,

- (a) prevent the treasurer from registering a new tax arrears certificate and proceeding under this Part; or
- (b) relieve the taxpayer of any liability to pay real property taxes imposed under this Act or a predecessor of this Act before registration of the certificate.

No registration

(5) If, one year after the day this section comes into force, no notice of forfeiture or tax arrears cancellation certificate is registered in accordance with subsection (2) or (3), the land shall be deemed to vest in the municipality in fee simple, together with all rights, privileges and appurtenances, free from all estates and interest subject only to,

- (a) easements and restrictive covenants that run with the land;
- (b) any estates and interests of the Crown in right of Canada or in right of Ontario; and

- (c) any interest or title acquired by adverse possession by abutting
landowners before the day of the deemed vesting.

Restriction

342. Despite the order of any court, after the day this Act comes into force, no person may apply to the Ministry to make a direction to a treasurer under section 46 of the *Municipal Affairs Act*, being chapter 303 of the Revised Statutes of Ontario, 1980.

NOTES ON SOURCES OF PART XIII PROVISIONS FEES AND CHARGES

Proposed New Policies:

Section 345

Section 347 (2)

Section 349 (1) (a)

Other Provisions:

The other provisions of Part XIII are based on the Municipal Act, as amended by the Savings and Restructuring Act, 1996

Note:

A new regulatory power has been proposed in Part XIII which is intended to replace the Local Improvement Act with a more streamlined and updated process.

**PART XIII
FEES AND CHARGES**

Definitions

343. In this Part,

"by-law" includes a resolution for the purpose of a local board; ("règlement municipal")

"local board" includes any body performing a public function prescribed by regulation and a school board, but for the purpose of passing by-laws imposing fees or charges under this Part does not include a school board or hospital board; ("conseil local")

"person" includes a municipality and a local board and the Crown. ("personne")

By-laws re: fees and charges

344. Despite any Act, a municipality and a local board may pass by-laws imposing fees or charges on any class of persons,

- (a) for services or activities provided or done by or on behalf of it;
- (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or local board;
- (c) for the use of its property including property under its control; and
- (d) for capital costs payable by it for sewage and water services or activities which will be provided or done by or on behalf of it after the fees or charges are imposed.

Restriction

345. (1) The power of a municipality and a local board to pass a by-law under this Part is subject to section 266 and for this purpose that section applies with necessary modifications to a local board.

Fees, charges exceeding costs recovery

(2) No by-law under this Part shall impose a fee or charge that exceeds cost recovery unless the by-law includes an explanation as to why the fee or charge exceeds cost recovery.

Interpretation

(3) A fee or charge exceeds cost recovery if, on the list for public inspection under section 266, the actual amount in clause 266 (1) (b) is greater than the estimated amount in clause 266 (1) (c).

Restriction, poll tax

346. No by-law under this Part shall impose a poll tax or similar fee or charge,

including a fee or charge which is imposed on an individual by reason only of his or her presence or residence in the municipality or part of it.

Same, other matters

347. (1) No by-law under this Part shall impose a fee or charge that is based on, is in respect of or is computed by reference to,

- (a) the income of a person, however it is earned or received, except that a municipality or local board may exempt, in whole or in part, any class of persons from all or part of a fee or charge on the basis of inability to pay;
- (b) the use, purchase or consumption by a person of property other than property belonging to or under the control of the municipality or local board that passes the by-law;
- (c) the use, consumption or purchase by a person of a service other than a service provided or performed by or on behalf of or paid for by the municipality or local board that passes the by-law;
- (d) the benefit received by a person from a service other than a service provided or performed by or on behalf of or paid for by the municipality or local board that passes the by-law; or
- (e) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources.

Basis of fee not limited

(2) Nothing in clause (1) (b) prevents the imposition of a fee or charge that is based on, is in respect of or is computed by reference to the location of the property, the physical characteristics of property (including buildings and structures on the property) or the zoning of property or other land use classification.

Same, electrical power

348. Nothing in this Part authorizes a municipality or local board to impose a fee or charge for supplying electrical power, including electrical energy, which exceeds the amount for the supply permitted by Ontario Hydro.

Contents of by-law

349. (1) A by-law under this Part may provide for,

- (a) fees and charges for the purpose of raising revenue but a fee or charge shall not be in the nature of an indirect tax;
- (b) interest charges and other penalties, including the payment of collection costs, for fees and charges that are due and unpaid;
- (c) discounts and other benefits for early payment of fees and charges;

- (d) fees and charges that vary on any basis the municipality or local board considers appropriate and specifies in the by-law, including the level or frequency of the service or activity provided or done, the time of day or of year the service or activity is provided and whether the class of persons paying the fee is a resident or non-resident of the municipality;
- (e) different classes of persons and deal with each class in a different way; and
- (f) the exemption, in whole or in part, of any class of persons from all or any part of the by-law.

Payment details

(2) A by-law under this Part shall set out when and in what manner the fees and charges are to be paid, the interest charges and other penalties, if any, for fees and charges that are due and unpaid and the discounts and other benefits, if any, for early payment of the fees and charges.

Approval of local board by-law

350. (1) A by-law imposing fees or charges passed under this Part by a local board of a municipality which is not a local board of any other municipality shall not come into force until the municipality passes a resolution approving the by-law.

Exception

(2) An approval under subsection (1) is not required if the fees or charges are subject to approval under any federal Act or under a regulation under subsection 353 (1).

Debt

351. (1) Fees and charges imposed by a municipality or local board on a person under this Part constitute a debt of the person to the municipality or local board, respectively.

Amount owing added to tax roll

(2) The treasurer of a local municipality may, and upon the request of its upper-tier municipality, if any, or of a local board whose area of jurisdiction includes any part of the municipality shall, add fees and charges imposed by the municipality, upper-tier municipality or local board, respectively, under this Part to the tax roll for the following property in the local municipality and collect them in like manner as municipal taxes:

1. In the case of fees and charges for the supply of a public utility, the property to which the public utility was supplied.
2. In all other cases, any property all of the owners of which are responsible for paying the fees and charges.

No application to O.M.B.

352. If a municipality or local board has imposed fees or charges under any Act, no application shall be made to the Municipal Board under clause 71 (c) of the *Ontario Municipal Board Act* on the grounds the fees or charges are unfair or unjust.

Regulations

353. (1) The Minister may make regulations,

- (a) providing that a municipality or local board does not have the power to impose fees or charges under this Part for services or activities, for costs payable for services or activities, for use of municipal property or on the persons prescribed in the regulation;
- (b) imposing conditions and limitations on the powers of a municipality or local board under this section;
- (c) providing that a body is a local board for the purpose of this Part.

Same

(2) The Minister may make regulations,

- (a) providing that fees or charges in a prescribed class of fees or charges which are added to the tax roll under subsection 351 (2) are deemed to be taxes;
- (b) requiring a municipality or local board to give the prescribed notice of its intention to pass a by-law imposing the fees and charges which are deemed to be taxes under clause (a) to the prescribed persons in the manner and form and at the times prescribed;
- (c) providing for a process of appealing a by-law under this Part to the extent that it imposes the fees or charges which are deemed to be taxes under clause (a) and providing that the appeal may apply to all or any aspect of the by-law specified in the regulations;
- (d) providing for the powers the person or body hearing the appeal under clause (c) may exercise;
- (e) providing for rules or authorizing the person or body hearing the appeal under clause (c) to determine when by-laws subject to appeal come into force, including a retroactive date not earlier than the day on which the by-law was passed.

Scope

(3) A regulation under this section may be general or specific in its application and may be restricted to those municipalities and local boards and classes of fees and charges specified in the regulation.

NOTES ON SOURCES OF PART XIV PROVISIONS DEBT AND INVESTMENT

Proposed New Policies:

None

Other Provisions:

The provisions of Part XIV are based on the following Acts:

Municipal Act, as amended by the Better Local Government Act, 1996
Regional Municipalities Act
12 Regional Acts

PART XIV
DEBT AND INVESTMENT

Debt

354. (1) Subject to this or any other Act, a municipality may incur a debt for municipal purposes, whether by borrowing money or in any other way, and may issue debentures for the debt.

Municipal purposes

(2) The municipal purposes referred to in subsection (1) include,

- (a) in the case of an upper-tier municipality, the purposes or joint purposes of one or more of its lower-tier municipalities;
- (b) the purposes of a school board if the school board exercises jurisdiction in all or part of the municipality and requires permanent improvements as defined in subsection 1 (1) of the *Education Act*;
- (c) the purposes of one or more other municipalities if any Act authorizes or requires the municipalities to provide money for any purpose jointly.

Limitation

(3) A lower-tier municipality in a regional municipality does not have the power to issue debentures.

Regulations

(4) The Lieutenant Governor in Council may make regulations prescribing debt and financial obligation limits for municipalities, including,

- (a) defining the types of debt, financial obligation or liability to which the limit applies and prescribing the matters to be taken into account in calculating the limit;
- (b) prescribing the amount to which the debts, financial obligations and liabilities under clause (a) shall be limited;
- (c) requiring a municipality to apply for the approval of the Ontario Municipal Board for each specific work or class of work, the amount of debt, financial obligation or liability for which, when added to the total amount of any outstanding debt, financial obligation or liability under clause (a), causes the limit under clause (b) to be exceeded;
- (d) prescribing rules, procedures and fees for the determination of the debt, financial obligation and liability limit of a municipality;

- (e) establishing conditions that must be met by any municipality or class of municipalities before undertaking a debt, financial obligation or liability or any specified class of them;
- (f) prescribing and defining financial instruments, other than debentures, that municipalities may issue for debt;
- (g) deeming prescribed financial instruments to be debentures for the purposes of specified provisions of this Part;
- (h) prescribing rules and procedures applying to prescribed financial instruments or classes of them.

Definition

(5) In this Part,

"work" includes any undertaking, project, scheme, act, matter or thing.

Notice

355. (1) Upon receipt of an application of a municipality to incur a debt, the Ontario Municipal Board may direct the municipality to give notice of the application to such persons and in such manner as the Board determines.

Objections

(2) The notice shall state that objections to the application may be made to the clerk of the municipality within the time period specified by the Board.

Copy of objections to O.M.B.

(3) The municipality shall forward a copy of the objections to the secretary of the Board.

Payments by lower-tier municipalities not located in counties

356. (1) A by-law of an upper-tier municipality authorizing the issuing of debentures for the purposes or joint purposes of one or more of its lower-tier municipalities, may require those lower-tier municipalities to make payments in each year to the upper-tier municipality in the amounts and on the dates specified in the by-law.

Counties excluded

(2) This section does not apply to counties.

Conditions

(3) The amounts required to be paid to the upper-tier municipality under subsection (1) shall, when combined with any amount payable by the upper-tier municipality in the year for repayment of the debt for which the debentures were issued, be sufficient to meet the total amount of principal and interest payable in the year by the upper-tier municipality to the lender under the by-law.

Exception

(4) The total amount of principal and interest payable in a year under subsection (3) does not include any outstanding amount of principal that is specified as payable on the maturity date of an upper-tier debenture, if one or more refinancing debentures are issued by the upper-tier municipality on or before the maturity date in respect of the outstanding principal.

Debt of lower-tier municipality

(6) All amounts required to be paid to an upper-tier municipality by a lower-tier municipality under this section are a debt of the lower-tier municipality to the upper-tier municipality.

Failure to pay

(6) A lower-tier municipality that fails to make any payment or portion of it as provided in the by-law under this section shall pay interest to the upper-tier municipality on the amount in default at the rate of 15 per cent per year, or such lower rate as the upper-tier municipality may by by-law determine, from the date the payment is due until it is made.

Joint obligations

(7) All debentures issued under a by-law passed by an upper-tier municipality under this section are direct, joint and several obligations of the upper-tier municipality and its lower-tier municipalities.

Levies

(8) A by-law under subsection (1) shall provide for raising in each year as part of the general upper-tier levy the amounts required to be paid to the upper-tier municipality in any previous year by a lower-tier municipality to the extent that the amounts have not been paid to the upper-tier municipality in accordance with the by-law.

Borrowing for school boards, other municipalities

357. (1) A municipality may incur debt and issue debentures for another municipality or for a school board under clause 354 (2) (a), (b) or (c) only if the other municipality or school board applies to the municipality and the municipality agrees.

Limitation

(2) This section does not authorize an application by a lower-tier municipality in a regional municipality unless,

- (a) the lower-tier municipality is authorized or required by any Act to provide money for a purpose jointly with the borrowing municipality; and
- (b) the debt referred to in the application is to be incurred for a joint purpose described in clause (a).

Application

(3) An application under subsection (1) shall state the nature and purpose of the proposed borrowing and the estimated costs related to it, including interest costs.

Joint application

(4) If the application is for a joint municipal purpose, the municipalities may make a joint application.

Duties of council

(5) The council of the municipality, at its first meeting after receiving the application or as soon as possible afterwards, shall approve or refuse the application and may approve the borrowing of all or part of the money needed.

Debenture by-law

(6) If the application is approved, council shall pass a by-law authorizing the borrowing.

Debenture payments

(7) The by-law shall require the school board or applicant municipality to make payments in each year to the municipality in the amounts and on the dates specified in the by-law.

Conditions

(8) The amounts required to be paid under subsection (7), when combined with any amount payable by the municipality in the year for repayment of the debt incurred for a joint purpose under clause 354 (2) (c), shall be sufficient to meet the total amount of principal and interest payable in the year by the municipality to the lender under the by-law.

Exception

(9) The total amount of principal and interest payable in a year under subsection (8) does not include any outstanding amount of principal that is specified as payable on the maturity date of a debenture if one or more refinancing debentures are issued by the municipality on or before the maturity date in respect of the outstanding principal.

Fees

(10) A municipality may require the payment to it of interest on any amount in default, penalties for late payment and fees by an applicant municipality or school board in an amount at least sufficient to reimburse it for the costs related to the approval or administration of a borrowing under this section.

Interest

(11) The interest payable under subsection (10) shall be at the rate of 15 per cent per year, or such lower rate as the municipality may by by-law determine, from the date the payment is due until it is made.

Debt of entity

(12) All amounts required to be paid under this section are a debt of the applicant municipality or school board to the municipality.

Default

(13) A by-law under subsection (6) shall provide for raising in each year as part of the general upper-tier levy or general local municipal levy, as applicable, the amounts payable under the by-law in any previous year to the extent that the amounts have not been paid over to the upper-tier municipality or local municipality, respectively, in accordance with the by-law.

Joint and several obligations

(14) All debentures issued under this section are direct, joint and several obligations of the municipality and any applicant municipality or school board for which it borrows money.

Temporary borrowing for works

358. (1) A municipality may authorize temporary borrowing to meet expenditures made in connection with a work to be financed in whole or in part by the issue of debentures if,

- (a) the municipality is an upper-tier municipality, a lower-tier municipality in a county or a single-tier municipality and it has approved the issue of debentures for the work;
- (b) the municipality is a lower-tier municipality in a regional municipality and it has approved the work and the upper-tier municipality has approved the issue of debentures for the work; or
- (c) the municipality has approved the issue of debentures for another municipality or a school board under section 357.

Use of proceeds

(2) The proceeds obtained under subsection (1) shall be applied to the approved work but the lender is not responsible for ensuring the proceeds are used in this manner.

Security

(3) For the purposes of this section, a municipality that has approved the issue of debentures but not sold them may authorize another municipality or school board to use the debentures as security for temporary borrowing.

Delegation

(4) A municipality may delegate the power in subsection (1) to the head of council, to the treasurer or to both of them.

Temporary borrowing, other entity

359. (1) A municipality shall authorize temporary borrowing for another municipality or a school board if,

- (a) the municipality has authorized the issue of debentures for the purposes of the other municipality or school board;
- (b) the other municipality or school board requests temporary borrowing for the purposes for which the debentures were authorized; and
- (c) the council of the municipality considers the terms of the agreement with the lender to be reasonable.

Transfer

(2) The municipality shall transfer the proceeds obtained under this section to the other municipality or school board.

Proceeds

(3) The proceeds obtained under this section shall be applied to the purposes for which the debentures were authorized but the lender is not responsible for ensuring the proceeds are used in this manner.

Delegation

(4) A municipality may delegate the powers in subsection (1) to the head of council, to the treasurer or to both of them.

Borrowing for current expenditures

360. (1) At any time during a fiscal year, a municipality may authorize temporary borrowing, until the taxes are collected and other revenues are received, of the amount council considers necessary to meet the current expenditures of the municipality for the year, including amounts required in the year for,

- (a) sinking and retirement funds;
- (b) principal and interest due on any debt of the municipality;
- (c) school purposes;
- (d) other purposes the municipality is required by law to provide for; and
- (e) the amount of principal and interest payable by a person or municipality primarily liable for a debt, if the municipality has guaranteed the debt and the debt is in default.

Limit

(2) Except with the approval of the Ontario Municipal Board, the total amount

borrowed at any one time plus any outstanding amounts of principal borrowed and accrued interest shall not exceed,

- (a) from January 1 to September 30 in the year, 50 per cent of the total estimated revenues of the municipality as set out in the budget adopted for the year; and
- (b) from October 1 to December 31 in the year, 25 per cent of the total estimated revenues of the municipality as set out in the budget adopted for the year.

Pending adoption of budget

(3) Until the budget is adopted in a year, the limits upon borrowing under subsection (2) shall temporarily be calculated using the estimated revenues of the municipality set out in the budget adopted for the previous year.

Exclusion

(4) In subsections (2) and (3) estimated revenues do not include revenues derivable or derived from,

- (a) any borrowing, including through any issue of debentures;
- (b) a surplus, including arrears of taxes, fees or charges; or
- (c) a transfer from the capital fund, reserve funds or reserves.

Lender not responsible

(5) The lender is not responsible for establishing the necessity of temporary borrowing under this section or the manner in which the borrowing is used.

Delegation

(6) A municipality may delegate the power in subsection (1) to the head of council, to the treasurer or to both of them.

By-laws re: debentures

361. (1) A municipality shall authorize long term borrowing by the issue of debentures or through another municipality under section 356 or 357.

Content of by-law

(2) Subject to this Act and the regulations, a municipality may pass by-laws authorizing, with respect to its debentures or any class of them,

- (a) the due dates, amounts of and methods for payment of principal and interest, including electronic transfer of payments;
- (b) the maturity dates;
- (c) the form of execution and use of the municipal seal;

- (d) a registry;
- (e) tenders and a process for tendering;
- (f) redemption;
- (g) refinancing;
- (h) cancellation, substitution, exchange and transfer of ownership;
- (i) the form of instrument;
- (j) notices or other communications to persons with an interest;
- (k) the use of electronic, magnetic or other media for records of or related to the debentures or for copies of them.

Term restriction

(3) The term of a debt of a municipality or any debenture issued for it shall not extend beyond the lifetime of the undertaking for which the debt was incurred and shall not exceed forty years.

Principal and interest payments

(4) A debenture by-law,

- (a) shall provide for raising in each year as part of the general upper-tier levy or the general local municipality levy, as applicable, the amounts of principal and interest payable in each year under the by-law to the extent that the amounts have not been provided for by other taxes or by fees or charges imposed on persons or property by a by-law of any municipality;
- (b) shall provide for repayment of the principal in annual instalments and payment of the interest on the unpaid balance in one or more instalments in each year; and
- (c) may provide for instalments of combined principal and interest.

Exception

(5) The total amount of principal and interest that must be raised in a year under clause (4)(a) does not include any outstanding amount of principal specified as payable on the maturity date of a debenture if one or more refinancing debentures are issued by the municipality on or before the maturity date in respect of the outstanding principal.

Dates of debentures

(6) Debentures may be dated as specified in the issuing by-law, including a date before the by-law is passed if the by-law provides for the first amount for repayment

being raised in the year in which the debentures are dated or in the next year.

All debentures rank equally

(7) Despite any general or special Act or any differences in date of issue or maturity, every debenture issued by a municipality shall rank concurrently and equally in respect of payment of principal and interest with all other debentures of the municipality.

Exception

(8) Subsection (7) does not apply to money in a sinking or retirement fund for a particular issue of debentures.

Consolidating debenture by-laws

(9) Despite any Act, if a municipality intends to incur debt for two or more purposes, or if it has passed separate debenture by-laws authorizing borrowing for two or more purposes but has not sold any of the debentures, the municipality may by by-law provide for the issue of one series of debentures for the debt.

Same

(10) A by-law under subsection (9),

- (a) shall recite or otherwise refer to the separate by-laws it consolidates; and
- (b) may authorize the issue of debentures in one series even if the principal and interest of some of the debentures is payable on different dates than the payment dates for other debentures in the series.

Admissibility

(11) If there is no original written record of or related to a debenture, any writing produced from an electronic or magnetic medium that is in a readily understandable form is admissible in evidence to the same extent as if it were an original written record.

Regulations

(12) The Lieutenant Governor in Council may make regulations governing municipal debentures, including prescribing matters referred to in subsection (2), and the regulations may be general or particular in their application.

Sinking and retirement fund debentures

362. (1) A municipality may provide in a debenture by-law,

- (a) that all or a portion of the debentures are sinking fund debentures which have the principal payable on a fixed date; or
- (b) that a retirement fund be established for the repayment of the principal amount of a class or classes of its debentures other than

sinking fund debentures.

Amount to be raised annually

(2) A by-law passed under this section shall provide for the raising in each year of the following amounts:

1. In respect of a sinking fund by-law, an estimated amount for the sinking fund which, with interest compounded annually, will be sufficient to pay the principal of the debentures at maturity.
2. In respect of a retirement fund by-law for a class of debentures other than a sinking fund debenture, an amount equal to or greater than the amount that would have been required for the repayment of the principal of the debentures in that year if the principal had been payable in equal annual instalments and the debentures had been issued for the maximum period authorized by the municipality for the repayment of the debt for which the debentures were issued.

Other levies

(3) A by-law passed under this section need not provide for the raising of any amount to the extent that the amount has been provided for by other taxes or by fees or charges imposed on persons or property by a by-law of any municipality.

Exception

(4) Despite clause 361 (4) (b), a municipality that passes a by-law under subsection (1) is not required to pay an annual instalment of an amount of principal to the holder of a debenture issued under the by-law.

Limitation

(5) Except as provided in this section, no amount raised for a sinking or retirement fund, including earnings or proceeds derived from the investment of those funds, shall be applied towards paying any part of the current or other expenditure of a municipality.

Duty to annually certify balance

(6) On or before December 31 in each year the municipal auditor shall certify the balance in each sinking and retirement fund of a municipality for the year.

Deficiency

(7) If the balance certified is less than the amount required in the year for the repayment of the sinking or retirement fund debentures for which the fund was established, the municipality shall pay an amount sufficient to make up the deficiency into the sinking or retirement fund.

Excess balance

(8) The certified balance may exceed the amount required in the year for the repayment of the sinking or retirement fund debentures for which the fund was

established.

Reduction of levy, etc.

(9) Despite this Act, a municipality may amend a debenture by-law to reduce an amount to be raised with respect to a sinking or retirement fund to the extent that the certified balance of the fund, including any estimated revenue, is or will be sufficient to repay the principal of the debt for which the fund was established on the date or dates the principal becomes due.

Repayment of principal

(10) Despite this Act, if the certified balance of a sinking fund or retirement fund, including any estimated revenue, is or will be sufficient to entirely repay the principal of the debt for which the fund was established on the date or dates the principal becomes due, the municipality may amend its debenture by-law to eliminate the provision for the raising of any amount for the sinking or retirement fund.

Remaining balance

(11) If there is a portion of a certified balance remaining after a municipality eliminates a provision for an amount to be raised in accordance with subsection (10), the municipality may apply the portion,

- (a) to the payment of interest on the principal of the sinking or retirement fund debenture; or
- (b) to each remaining sinking fund or retirement fund of the municipality proportionately as the amount of the fund bears to the total of all sinking or retirement funds.

Further amounts

(12) If there is any amount remaining after applying the funds in accordance with subsection (11), the municipality may transfer the amount to the general fund of the municipality.

Upper-tier municipality

(13) In the case of a sinking or retirement fund established by an upper-tier municipality for the purposes or joint purposes of one or more of its lower-tier municipalities, the upper-tier municipality,

- (a) shall, if it reduces or eliminates any amount to be raised under subsection (9) or (10) with respect to the fund, reduce or eliminate them for lower-tier purposes proportionate to the contributions to that fund by its lower-tier municipalities;
- (b) shall, despite subsection (11), apply any portion under that subsection proportionate to the contributions to the fund or to all sinking or retirement funds of the municipality, as the case may be, by its lower-tier municipalities; and

- (c) shall, despite subsection (12), if there is any amount remaining after applying the funds in accordance with clause (b), transfer to its lower-tier municipalities their proportionate share of the amount based on their contributions to the fund.

Sinking fund committee

363. (1) A municipality may establish a sinking fund committee composed of the treasurer of the municipality and any number of persons appointed by the municipality.

Alternate

(2) The municipality may appoint an alternate member for each of the appointed members and an alternate member has all the powers and duties of a member when acting in his or her absence.

Chair

(3) The municipal treasurer shall be the chair and the treasurer of the sinking fund committee but, in the absence of the treasurer, another member of the committee may be appointed by the members of the committee as acting chair and treasurer.

Quorum

(4) A majority of the members of the sinking fund committee is a quorum.

Duties

(5) The sinking fund committee shall manage the sinking funds, including a retirement fund established under section 362, and,

- (a) may invest sinking fund money in any securities that the municipality which established the committee is permitted to invest in;
- (b) shall approve or not approve any sinking fund investment or disposition of that investment; and
- (c) may apply balances or other amounts in accordance with section 362.

Signing cheques

(6) All cheques on any account established by a sinking fund committee shall be signed by the chair or acting chair and by one other member of the committee.

Debentures in foreign currency

364. (1) Subject to this Act, a prescribed municipality may issue debentures or prescribed classes of them expressed and payable in one or more prescribed foreign currencies, subject to the prescribed rules.

Same

(2) A debenture issued under subsection (1) may provide for payment of

interest, premium and principal in one or more prescribed foreign currencies, in Canadian dollars, or a combination of any of them.

Estimated amounts

(3) A by-law passed under this section may provide for raising or paying an estimated amount in a year, despite other provisions in this Act requiring that a specific amount be raised or paid.

Variation

(4) The estimated amount may vary from year to year.

Regulations

(5) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the foreign currencies in which debentures may be issued;
- (b) prescribing municipalities or classes of them that may issue debentures under this section;
- (c) prescribing other requirements that municipalities must meet to issue debentures under this section;
- (d) prescribing rules for the purposes of subsection (1);
- (e) requiring a municipality to enter into financial agreements in the manner and with the persons prescribed;
- (f) prescribing additional powers that a municipality may exercise in issuing debentures expressed and payable in foreign currency.

Classes

(6) A regulation under subsection (5) may apply to one or more classes of municipalities and may treat different classes of municipalities differently.

Fixed rate of interest

365. (1) A by-law for the issue of debentures shall specify a fixed rate of interest unless otherwise permitted by this Act.

Amending issuing by-law

(2) A municipality may amend a debenture by-law to provide for,

- (a) a different rate of interest;
- (b) a change in the amount to be raised annually because of the different interest rate; and
- (c) other changes in any by-law necessary to give effect to the

amending by-law.

Use as security not a sale

(3) For the purposes of subsection (2), the use of debentures as security for temporary borrowing does not prevent a council from passing by-laws under subsection (2) with respect to those debentures.

Special levies

(4) A by-law passed under subsection (2) does not affect,

- (a) the validity of any by-law under which amounts are raised for the repayment of debentures; or
- (b) the power of the council to continue to levy or collect any instalments.

Variable rate

(5) Despite this or any other Act, a prescribed municipality may pass a by-law for the issue of debentures providing for variations in the rate of interest or classes of rates of interest and for the payment of other amounts in accordance with the prescribed rules.

Estimate of amount to be raised

(6) A by-law passed under subsection (5) may provide for raising or paying an estimated amount in a year, despite provisions in this or any other Act requiring that a specific amount be raised or paid.

Variation

(7) The estimated amount may vary from year to year.

Regulations

(8) The Lieutenant Governor in Council may make regulations,

- (a) prescribing municipalities or classes of municipalities for the purpose of subsection (5);
- (b) prescribing rules for the purpose of subsection (5).

Use of money received

366. (1) Subject to section 362 and this section, money received by a municipality from the sale of debentures, including any premium, and any earnings derived from the investment of that money, shall be applied only for the purposes for which the debentures were issued or for repayment of outstanding temporary borrowing under section 358 or 359 with respect to those debentures and shall not be applied towards payment of current or other expenditures of the municipality.

Money not required

(2) If the money described in subsection (1) is in excess of or is not required for the purposes for which the debentures were issued, it shall be applied,

- (a) to repay the principal or interest of the debentures; or
- (b) to repay any other capital expenditure of the municipality if the debt charges for the other expenditure are or will be raised from the same class of ratepayers from which the amounts required for the repayment of the debentures are raised.

Reduction of levies, etc.

(3) A municipality may reduce an amount to be raised for the repayment of debentures to the extent that an amount applied in accordance with subsection (2) is sufficient to repay the principal and interest of the debentures on the date or dates they are payable.

Full amount recoverable

(4) The full amount of a debenture is recoverable even if it was negotiated at a discount by a municipality.

Restrictions

367. (1) Subject to this Act, after a debt has been contracted under a by-law, the municipality shall not, until the debt and interest have been paid,

- (a) repeal the by-law or any by-law appropriating money from any source for the payment of the debt or the interest including the surplus income from any work financed by the debt; or
- (b) alter any by-law referred to in clause (a) so as to diminish the amount to be raised annually.

Repeal where only part of amount raised

(2) If a debenture by-law authorizes a municipality to raise an amount but the amount realized from the sale or loan of the debentures is less than the amount authorized, the municipality may repeal the debenture by-law with respect to the unused debentures and with respect to any amount that would have been required to be raised annually to repay the unused debentures.

Effective date

(3) The repealing by-law shall recite the facts on which it is based, shall take effect on December 31 in the year it is passed and shall not affect any taxes, fees or charges due or penalties incurred before that day.

Registration of debenture by-law

368. (1) Within four weeks after the passing of a debenture by-law, the clerk may register a duplicate original or a certified copy of the by-law under seal of the municipality in any land registry division in which the municipality is located.

Application to quash

(2) Subject to section 62 of the *Ontario Municipal Board Act*, if a by-law is registered under subsection (1) before the sale or other disposition of the debentures

issued under it,

- (a) the debentures are valid according to the terms of the by-law; and
- (b) the by-law shall not be quashed unless within three months after the registration an application is made to a competent court to quash the by-law and a certified copy of the application under seal of the court is registered in the land registry office within that period.

Timing

(3) After the expiration of the period referred to in clause (2) (b), if no application to quash the by-law has been made, the by-law is valid.

Quashing part of by-law

(4) If application is made to quash only part of a by-law, the remainder of the by-law is valid after the expiration of the period referred to in clause (2) (b).

Dismissal of application

(5) If the application is dismissed in whole or in part, a certificate of the dismissal may be registered and, if the period referred to in clause (2) (b) has expired, the by-law or so much of it as is not quashed is valid.

Illegal by-law not validated

(6) Nothing in this section makes valid a by-law that requires but has not received the assent of the electors or a by-law which, on the face of it, does not conform to the requirements set out in subsections 361 (3) and (4) and 365 (1) and (5).

Failure to register

(7) Failure to register a by-law as prescribed by this section does not invalidate it.

Interest paid for over a year

369. If the interest on a debenture issued under a by-law has been paid for one year or more by the municipality or any part of the principal has been paid, the by-law and the debenture issued under it are valid and binding on the municipality.

Reserve funds

370. (1) Every municipality and local board and any other body exercising a power with respect to municipal affairs under any Act in unorganized territory may in each year provide in its budget for the establishment or maintenance of a reserve fund for any purpose for which it has authority to spend money.

Approval

(2) If the approval of a municipality is required by law for a capital expenditure or the issue of debentures by or on behalf of a local board, the local board must obtain the approval before providing for a reserve fund for those purposes in its budget.

Investment

(3) The money raised by a body exercising a power with respect to municipal affairs under any Act in unorganized territory for a reserve fund shall be paid into a special account and may be invested only in the securities or classes of securities prescribed.

Expenditure of reserve funds

(4) A municipality may by by-law provide that the money raised for a reserve fund established under subsection (1) may be spent, pledged or applied to a purpose other than that for which the fund was established.

Regulations

(5) The Lieutenant Governor in Council may make regulations prescribing securities or classes of securities for the purpose of subsection (3).

Scope

(6) A regulation made under this section may be general or particular in its application.

Investment

371. (1) A municipality may invest in prescribed securities, in accordance with the prescribed rules, money that it does not require immediately including,

- (a) money in a sinking, retirement or reserve fund;
- (b) money raised or received for the payment of a debt of the municipality or interest on the debt; and
- (c) proceeds from the sale, loan or investment of any debentures.

Repayment

(2) An investment under subsection (1) shall be made repayable on or before the day on which the money is required and any earnings derived from the investment shall be credited to the fund from which the money was invested.

Combined investments

(3) A municipality may combine money held in any fund and deal with the money in accordance with subsection (1).

Allocation

(4) Earnings from combined investments shall be credited to each separate fund in proportion to the amount invested from it.

Delegation

(5) A municipality may delegate its power under this section to the treasurer.

Regulations

(6) The Lieutenant Governor in Council may make regulations,

- (a) prescribing rules for the purpose of subsection (1);
- (b) prescribing and defining securities or classes of them for the purpose of subsection (1);
- (c) providing that a municipality does not have power to invest in securities or classes of securities specified in the regulation.

Scope

(7) A regulation under this section may be general or particular in its application.

Agents

372. (1) A power given to a municipality to invest money includes the power to invest the money through an agent of the municipality.

Limitation

(2) Subsection (1) does not apply to money invested to pay the principal and interest of sinking fund or retirement fund debentures.

Agreements

373. (1) A power given to a municipality under this Act to invest money includes the power to enter into an agreement for the investment of money with any other municipality or with,

- (a) a public hospital;
- (b) a university in Ontario which is a degree granting institution under the *Degree Granting Act*;
- (c) a college established under section 5 of the *Ministry of Colleges and Universities Act*;
- (d) a school board; or
- (e) any agent of an institution described in clauses (a) to (d).

Restriction

(2) Investment under this section is restricted to the investments that are permitted to the participating municipality with the most limited investment powers.

Regulations

(3) The Minister may make regulations,

- (a) prescribing additional persons or bodies or any class of them with which a municipality may enter into investment agreements;
- (b) prescribing conditions to be satisfied before a municipality may

enter into an investment agreement with a person or body or class of either of them prescribed under clause (a).

Loan of securities

374. (1) A municipality may lend any securities held by it if the loan is fully secured by cash or by securities prescribed in subsection 371 (6).

Regulations

(2) The Minister may make regulations establishing conditions for lending securities under subsection (1).

Offence

375. Every officer of a municipality whose duty it is to carry into effect any provision of a by-law for the borrowing of money who neglects or refuses to do so is guilty of an offence, even if the reason the officer neglects or refuses to fulfil his or her duty is the apparent authority to do so under a by-law that is illegally attempting to repeal or amend the borrowing by-law.

Prohibition

376. (1) A member of a municipal council who knowingly votes to authorize the borrowing of any amount larger than permitted under section 360 is disqualified from holding any municipal office for two years.

Exception

(2) Subsection (1) does not apply to a member of council acting under an order or direction issued under Part III of the *Municipal Affairs Act*.

Liability of members for diversion of funds

377. (1) If a council applies any money raised for a special purpose or collected for a sinking or retirement fund to pay current or other expenditure otherwise than permitted by this Act, each member who votes for the application,

(a) is personally liable for the amount so applied which may be recovered in a court of competent jurisdiction; and

(b) is disqualified from holding any municipal office for two years.

Action by ratepayer

(2) If a council, on the request in writing of a ratepayer, refuses or neglects for one month to bring a court action under clause (1) (a), the action may be brought by any ratepayer on behalf of all ratepayers.

Penalty

(3) If a council neglects in any year to levy the amount required to be raised for a sinking or retirement fund, each member of the council is disqualified from holding any municipal office for two years, unless the member shows that he or she made reasonable efforts to procure the levying of the amount.

Statement of treasurer

(4) If in any year an amount is or will be required by law to be raised for a sinking fund or retirement fund in a municipality, the treasurer of the municipality shall prepare for the council, before the budget for the year is adopted, a statement of the amount.

Offence

(5) Every treasurer who contravenes subsection (4) is guilty of an offence.

NOTES ON SOURCES OF PART XV PROVISIONS ENFORCEMENT

Proposed New Policies:

Section 379 (1)
Section 381 to 385
Section 389 (2)
Section 390

Other Provisions:

The other provisions of Part XV are based on the Municipal Act.

PART XV ENFORCEMENT

Offences

378. By-laws may be passed by the councils of all municipalities and by police services boards for providing that any person who contravenes any by-law of the council or of the board, as the case may be, passed under this Act, is guilty of an offence.

Obstruction

379. (1) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this Act or a by-law under this Act.

Offence

(2) Any person who contravenes subsection (1) is guilty of an offence.

Municipal remedial action

380. (1) If a municipality has authority by by-law or otherwise to direct or require that a matter or thing be done, the municipality may, in the same or another by-law direct that, in default of it being done by the person directed or required to it, such matter or thing shall be done at the person's expense.

Entry upon land

(2) For the purposes of subsection (1), the municipality may enter upon land and into structures at any reasonable time without a warrant.

Recovery of costs

(3) The municipality may recover the costs of doing a thing or matter under subsection (1) from the person directed or required to do it and the municipality may recover the costs by action or in like manner as municipal taxes.

Administrative inspection

381. A municipality may enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether its by-laws under this Act are being complied with.

Exercise of power

382. Where a municipality has a power of entry under this Act, the power shall be exercised by an employee or agent of the municipality who may be accompanied by any person under his or her direction.

Identification

383. A person exercising a power of entry under this Act must on request display or produce proper identification.

Entry to Dwellings

384. Despite any provision of this Act, a person exercising a power under this

Act or a by-law under this Act shall not enter or remain in any room or place actually being used as a dwelling unless,

- (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of a warrant issued under section 158 of the *Provincial Offences Act*;
- (b) a warrant issued under section 158 of the *Provincial Offences Act* is obtained;
- (c) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person; or
- (d) the requirements of section 385 are met and the entry is authorised under section 34 or 35 or subsection 380 (2).

Where power of entry exercised

385. Where a municipality exercises a power of entry under this Act, the municipality shall,

- (a) except with respect to an entry under section 381 or clause 384 (a), (b) or (c), provide reasonable notice of the proposed entry to the occupier of the land by personal service or prepaid mail or by posting the notice on the land in a conspicuous place;
- (b) despite clause (a), in the case of an entry under clause 384 (d), give reasonable notice of the proposed entry to the occupier of the land by personal service;
- (c) in so far as is practicable, restore the land to its original condition; and
- (d) provide compensation for any damages caused by the entry.

Order closing premises

386. (1) Where an owner is convicted of knowingly carrying on or engaging in a trade, business or occupation on, in or in respect of any premises or any part of any premises without a licence required by a by-law under this Act, the court may order that the premises or part of the premises be closed to any use for a period not exceeding two years.

Same

(2) Where a person is convicted of a contravention of a licensing by-law under this Act, other than a conviction described in subsection (1), and the court determines that the owner or occupant of the premises or part of the premises in respect of which the conviction was made knew or ought to have known of the conduct which formed

the subject matter of the conviction or of any pattern of similar conduct, the court may order that the premises or part of the premises be closed to any use for a period not exceeding two years.

Suspension of closing order

(3) Upon application of any person who has an interest in the premises ordered closed under this section, the Ontario Court (General Division) may suspend any closing order for such period and upon such conditions as are specified by the court if,

- (a) the court is satisfied that the use to which the premises will be put will not contravene a licensing by-law under this Act; and
- (b) the applicant posts a cash bond for \$10,000 or such greater sum as the court determines, for such term as the court determines, to ensure that the premises will not be used in contravention of any by-law.

Discharge of closing order

(4) The Ontario Court (General Division) may discharge a closing order if, upon application, it is satisfied that,

- (a) there has been or will be a change in the effective ownership of the premises subsequent to the commission of an offence described in subsection (1) or (2); and
- (b) the new owner can ensure that there will be no contravention of any licensing by-law under this Act.

Barring of entry

(5) If a closing order is made under this section, the police force responsible for policing in the municipality shall bar entry to all entrances to the premises or parts of the premises named in the order until the order has been suspended or discharged under this section.

Forfeiture of bond

(6) If a closing order is suspended under subsection (3) and after the suspension a person is convicted of an offence for contravening a licensing by-law under this Act in respect of the premises or part of them referred to in the closing order, a judge of the Ontario Court (General Division) may, upon application, order the forfeiture of the bond and the payment to the Crown of the proceeds and order the suspension lifted and the closing order reinstated.

No appeal

(7) No appeal lies from an order made under subsection (6).

Notice

(8) The municipality which passed the licensing by-law in respect of which a closing order was made is a party to any proceedings instituted under subsection (3),

(4) or (6) in respect of the order and shall be given notice of the proceedings in accordance with the rules of the court.

By-law deemed passed by council

(9) For the purposes of subsection (8), if the licensing by-law was passed by a police services board or by a licensing commission for a municipality, the by-law shall be deemed to have been passed by the municipality.

Application for suspension or discharge of closing order

(10) Where an appeal is taken from a closing order or from a conviction in respect of which the order was made, the appellant may apply under subsection (3) for a suspension of the closing order until the disposition of the matter under appeal or any person may apply under subsection (4) for a discharge of the order but the commencement of an appeal does not stay the order.

Term of closing order

(11) A closing order shall take effect immediately upon its issuance and shall remain in effect for the term specified in the order except to the extent that it is suspended under subsection (3) or unless it is discharged under subsection (4).

Description of premises

(12) The description of any premises in a closing order by reference to its municipal address is sufficient for the purposes of the order.

Registration

(13) A closing order may be registered in the land registry office in which the title to the place described in the order is recorded.

Definition

(14) In subsections (1) and (2),

"court" means the Ontario Court (Provincial Division) or a court to which an appeal may be taken under Part VII of the *Provincial Offences Act*.

Convictions not invalidated

387. (1) If a court convicts a person for a contravention of a by-law without proof of the by-law, another court hearing a motion to quash the conviction may dispense with such proof or may permit the by-law to be proved by affidavit or in such other manner as it considers appropriate.

Requirement as to proof

(2) Nothing in this section relieves a prosecutor from the duty of proving the by-law or entitles the convicting court to dispense with such proof.

Certified copies of records admissible

388. (1) A copy of any record under the control of the clerk of a municipality purporting to be certified by the clerk and under the municipal seal may be filed and used in any court or tribunal instead of the original and is admissible in evidence

without proof of the seal or of the signature or official character of the person signing it, unless the court or tribunal otherwise directs.

Certified copies, local boards

(2) A copy of any record under the control of an officer of a local board purporting to be certified by the officer and under the seal of the local board or containing a statement by the officer that there is no seal, may be filed and used in any court or tribunal instead of the original and is admissible in evidence without proof of the seal or statement or of the signature or official character of the person signing it, unless the court or tribunal otherwise directs.

Same, archivist, etc.

(3) A copy of any record transferred to the archivist or archives under section 244 and certified by the archivist or an officer of the archives having responsibility for the record may be filed and used in any court or tribunal instead of the original and is admissible in evidence without proof of the signature or official character of the person signing it, unless the court or tribunal otherwise directs.

Statement of licensing status

(4) In any prosecution or proceeding under a by-law for licensing, regulating or inspecting any trade, business or occupation, a statement as to the licensing or non-licensing of any premises or person purporting to be signed by the clerk of a municipality or by the chief administrative officer of a police services board or licensing commission is, without proof of the office or signature of the clerk or officer, receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the statement for all purposes in the prosecution or proceeding.

Proof of seal or signature not required

(5) Every by-law purporting to be under the municipal seal and signed by head of council or presiding officer at the meeting at which the by-law is passed when produced by the clerk or any other officer of the corporation charged with the custody of it, is admissible in evidence in all courts without proof of the seal or signature.

Fines

389. (1) Except as otherwise provided in any Act, every fine imposed for a contravention of a by-law of a municipality or a local board of a municipality belongs to the municipality.

Proceeds in cases of obstruction

(2) The proceeds of any fine imposed in a prosecution conducted by a municipality under section 379 shall be paid to the treasurer of the municipality, and section 2 of the *Administration of Justice Act* and section 4 of the *Fines and Forfeitures Act* do not apply in respect of that fine.

Fines, special cases

390. The fines imposed for the contravention of by-laws of any lower-tier municipality shall, where prosecuted by the police force of the upper-tier municipality, belong to the upper-tier municipality and, where prosecuted by any other person,

belong to the lower-tier municipality whose by-law has been contravened.

Illegally parked vehicles, owner's liability

391. (1) A by-law passed for the purposes of section 378 may provide that, where a vehicle has been left parked, stopped or left standing in contravention of a by-law under this Act, the owner of the vehicle, even though the owner was not the driver of the vehicle at the time of the contravention of the by-law, is guilty of an offence and is liable to the fine prescribed for the offence unless, at the time of the offence, the vehicle was in the possession of some person other than the owner without the owner's consent.

Payment out of court

(2) A by-law passed for the purposes of section 378 may provide a procedure for the voluntary payment of penalties out of court in cases where it is alleged that a by-law related to the parking, standing or stopping of vehicles has been contravened.

Collection of unpaid licensing fines

392. (1) A municipality may authorize the treasurer or his or her agent to give the notice under subsection (2) at the times and in the manner set out in the by-law.

Notice of unpaid licensing fine

(2) If any part of a fine for a contravention of a licensing by-law passed under this Act remains unpaid after the fine becomes due and payable under section 66 of the *Provincial Offences Act*, including any extension of time for payment ordered under that section, the authorized officer may give the person against whom the fine was imposed a written notice specifying the amount of the fine payable and the final date on which it is payable, which shall be not less than 21 days after the date of the notice.

Seizure for unpaid licensing fine

(3) If the fine remains unpaid after the final date specified in the notice, the fine shall be deemed to be unpaid taxes for the purposes of section 308.

Costs in legal proceedings

393. (1) Despite any Act, in any proceeding to which a municipality or local board is a party, costs adjudged to the municipality or local board shall not be disallowed or reduced merely because the counsel who earned the costs, or in respect of whose services the costs are charged, was a salaried officer of the municipality or local board or of a municipality acting on behalf of the local board and for that, or any other reason, was not entitled to recover any costs from the municipality or local board in respect of the services rendered.

Costs to general fund

(2) The costs recovered in any proceeding by or on behalf of a municipality or local board shall form part of the general funds of the municipality or local board, respectively.

Prohibit continuation of offence

394. If any by-law of a municipality or of a local board under this or any other Act is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Power to restrain by action

395. If any by-law of a municipality or local board under this or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by action at the instance of a taxpayer or the municipality or local board.

Right to enforce agreements, etc.

396. Where a duty or liability is imposed by statute or agreement upon any person in favour of a municipal corporation or in favour of some or all of the residents of a municipality, the municipality may enforce it and obtain such relief and remedy as could be obtained,

- (a) in a proceeding by the Attorney General;
- (b) in a relator proceeding by any person in the name of the Attorney General; or
- (c) in a proceeding by the residents on their own behalf or on behalf of themselves and other residents.

Application of Part

397. This Part applies with necessary modifications to by-laws passed by the council of a municipality or by a police services board under any other general or special Act except as otherwise provided in that Act.

NOTES ON SOURCES OF PART XVI PROVISIONS MUNICIPAL LIABILITY

Proposed New Policies:

Section 398 (1)

Section 401

Other Provisions:

The other provisions of Part XVI are based on the Municipal Act, as amended by the Better Local Government Act, 1996

PART XVI MUNICIPAL LIABILITY

Immunity

398. (1) No proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority.

Liability for torts

(2) Subsection (1) does not relieve a municipality of liability to which it would otherwise be subject in respect of a tort committed by a member of council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent.

Invalid by-laws

399. No proceeding shall be commenced for anything done under a by-law, order or resolution of a municipality that is invalid, in whole or in part, until one month after the by-law, order or resolution, or so much of it as is invalid, has been quashed or repealed, and every such proceeding shall be brought against the municipality alone, and not against any person acting under the by-law, order or resolution.

Liability in nuisance re water and sewage

400. (1) No proceeding based on nuisance, in connection with the escape of water or sewage from sewage works or water works, shall be commenced against,

- (a) a municipality or local board;
- (b) a member of a municipal council or of a local board; or
- (c) an officer, employee or agent of a municipality or local board.

Definitions

(2) In this section,

"sewage works" means all or any part of facilities for the collection, storage, transmission, treatment or disposal of sewage, including a system under Part VIII of the *Environmental Protection Act*; ("station d'épuration des eaux d'égout")

"water works" means facilities for the collection, production, treatment, storage, supply or distribution of water, or any part of the facilities. ("station de purification de l'eau")

Rights preserved

(3) Subsection (1) does not exempt a municipality or local board from liability

arising from a cause of action that is created by a statute or from an obligation to pay compensation that is created by a statute.

Transition

(4) Subsection (1) does not apply if the cause of action arose before December 19, 1996.

Policy decisions

401. No proceeding based on negligence in connection with the exercise or non-exercise of a discretionary power or the performance or non-performance of a discretionary function, if the action or inaction results from a policy decision of a municipality or local board made in a good faith exercise of the discretion, shall be commenced against,

- (a) a municipality or local board;
- (b) a member of a municipal council or of a local board; or
- (c) an officer, employee or agent of a municipality or local board.

NOTES ON SOURCES OF PART XVII PROVISIONS REGULATIONS

Proposed New Policies:

Section 402 (entire Part)

Other Provisions:

None

PART XVII REGULATIONS

Regulations

402. (1) The Lieutenant Governor in Council may, by regulation,

- (a) restrict the power of municipalities under this or any other Act, including their capacity, rights, powers and privileges under section 8; and
- (b) authorize municipalities to exercise a power respecting financial matters that they had on the day before this section comes into force.

Examples

(2) Without restricting the generality of clause (1) (a), a regulation under that clause may,

- (a) limit municipal regulation that, in the opinion of the Lieutenant Governor in Council, is unnecessary or represents duplication;
- (b) limit municipal power to engage in commercial activities; or
- (c) limit municipal power to engage in commercial activities that, in the opinion of the Lieutenant Governor in Council, represent inappropriate competition with private commercial activities.

Scope

(3) A regulation made under subsection (1) may apply to different municipalities differently.

Retroactive

(4) A regulation made under clause (1) (b) may be retroactive to a day not earlier than the day this section comes into force.

Three-year period

(5) A regulation made under subsection (1) shall be deemed to be revoked on the third anniversary of the day it comes into force, if it has not been revoked before that time.

No extension

(6) The Lieutenant Governor in Council does not have power to renew or extend a regulation made under subsection (1) or replace it with a regulation of similar effect.

NOTES ON SOURCES OF PART XVIII PROVISIONS TRANSITION

Proposed New Policies:

Section 403 (1)

Section 406 (1)

Other Provisions:

The other provisions of Part XVIII are intended to facilitate the transition from the existing Municipal Act to the proposed new Act.

PART XVIII
TRANSITION

Police villages

403. (1) Despite the repeal of the *Municipal Act*, police villages in existence on the day this Act comes into force continue to exist until December 1, 2000 upon which date they are dissolved unless they are dissolved earlier.

Continuation

(2) Sections 332 to 357 of the repealed Act, as they read on the day before their repeal under this Act, continue to apply to those police villages and the local municipalities in which they are located except,

- (a) a reference in those sections to a township or village shall be deemed to be a reference to a local municipality; and
- (b) the references in section 348 to other provisions of the repealed Act shall be deemed to be references to those provisions as they read on the day before this Act came into force.

No election

(3) No election shall be conducted in November, 2000 to elect trustees of a police village.

After dissolution

(4) A local municipality in which any part of a police village dissolved under this section is located stands in place of the police village for all purposes with respect to that part of the police village.

Terms in other Acts

404. (1) In any Act or regulation,

- (a) a reference to a tax collector of a municipality shall be deemed to be a reference to the treasurer of the municipality;
- (b) a reference to a collector's roll of a municipality shall be deemed to be a reference to the tax roll of the municipality; and
- (c) a reference to a clerk of a local municipality taking any action or receiving notice with respect to the collector's roll of the local municipality shall be deemed to be a reference to the treasurer of the local municipality.

Same

(2) If a person is the tax collector but not the treasurer or deputy treasurer of a local municipality on December 31, 1998, the municipality shall be deemed to have passed a by-law on January 1, 1999 appointing the person as a deputy treasurer of the municipality.

Interim levy for 1998

405. Despite the repeal of the *Municipal Act*, sections 370 and 371 of the repealed Act, as they read on the day before their repeal under this Act, continue to apply with respect to taxes levied under subsection 370 (8) of the repealed Act.

Boards of control

406. (1) Despite the repeal of the *Municipal Act*, Part V of that Act, as it read on the day before its repeal under this Act, continues to apply to boards of control in existence on the day before this Act came into force, except a reference in subsections 68 (3), (6) and (7) of the repealed Part to a two-thirds vote shall be deemed to be a reference to a majority vote.

City of London

(2) The board of control of The Corporation of the City of London shall be deemed to be a board of control under section 64 of the *Municipal Act*, as it read on the day before its repeal under this Act.

Telephone system

407. Despite the repeal of the *Telephone Act*, an approval or consent given by the Ontario Telephone Service Commission under section 42 or 43 of that Act, as it read on the day before its repeal under this Act, continues to apply to authorize a municipality to extend its telephone system into another municipality or into unorganized territory.

**NOTES ON SOURCES OF PART XIX PROVISIONS
REPEALS**

Proposed New Policies:

Section 408 (entire Part)

Other Provisions:

None

PART XIX
REPEALS

408. The following are repealed:

City of Mississauga Act, 1988.

Section 2 of the *City of Toronto Act, 1909*, being chapter 128.

Section 13 of the *City of Toronto Act, 1997*, (No.2).

Sections 2, 4 and 6 to 12 of the *Community Recreation Centres Act.*

County of Oxford Act, as amended.

Parts I to VII and Part IX (other than section 76) of the *County of Simcoe Act, 1993*, as amended.

District Municipality of Muskoka Act, as amended.

Ferries Act.

Local Government Disclosure of Interest Act, 1994, as amended.

Local Improvement Act.

Sections 1 to 42, 44 to 46, 49 to 53 and 55 to 61 of the *London-Middlesex Act, 1992.*

Municipal Act, as amended.

Municipal Boundary Negotiations Act, as amended.

Municipal Interest and Discount Rates Act.

Municipal Tax Sales Act, as amended.

Section 23 of the *Municipal Tax Sales Act, 1984.*

Ontario Municipal Support Grants Act.

Public Parks Act.

Sections 44, 46, 54, 55, 57, 61, 62, 63, 72, 95, 96, 97, 101, 102, 104 and 107 of the *Public Transportation and Highway Improvement Act.*

Regional Municipalities Act, as amended.

Regional Municipality of Durham Act, as amended.

Regional Municipality of Haldimand-Norfolk Act, as amended.

Regional Municipality of Halton Act, as amended.

Regional Municipality of Hamilton-Wentworth Act, as amended.

Regional Municipality of Niagara Act, as amended.

Regional Municipality of Ottawa-Carleton Act, as amended.

Regional Municipality of Peel Act, as amended.

Regional Municipality of Sudbury Act, as amended.

Regional Municipality of Waterloo Act, as amended.

Regional Municipality of York Act, as amended.

Sarnia-Lambton Act, 1989.

Snow Roads and Fences Act.

Telephone Act, as amended.

Town of Markham Act, 1989.

